



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

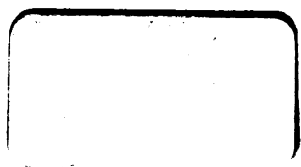
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

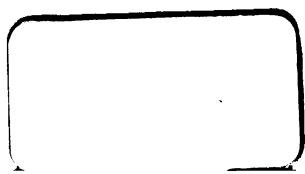
- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

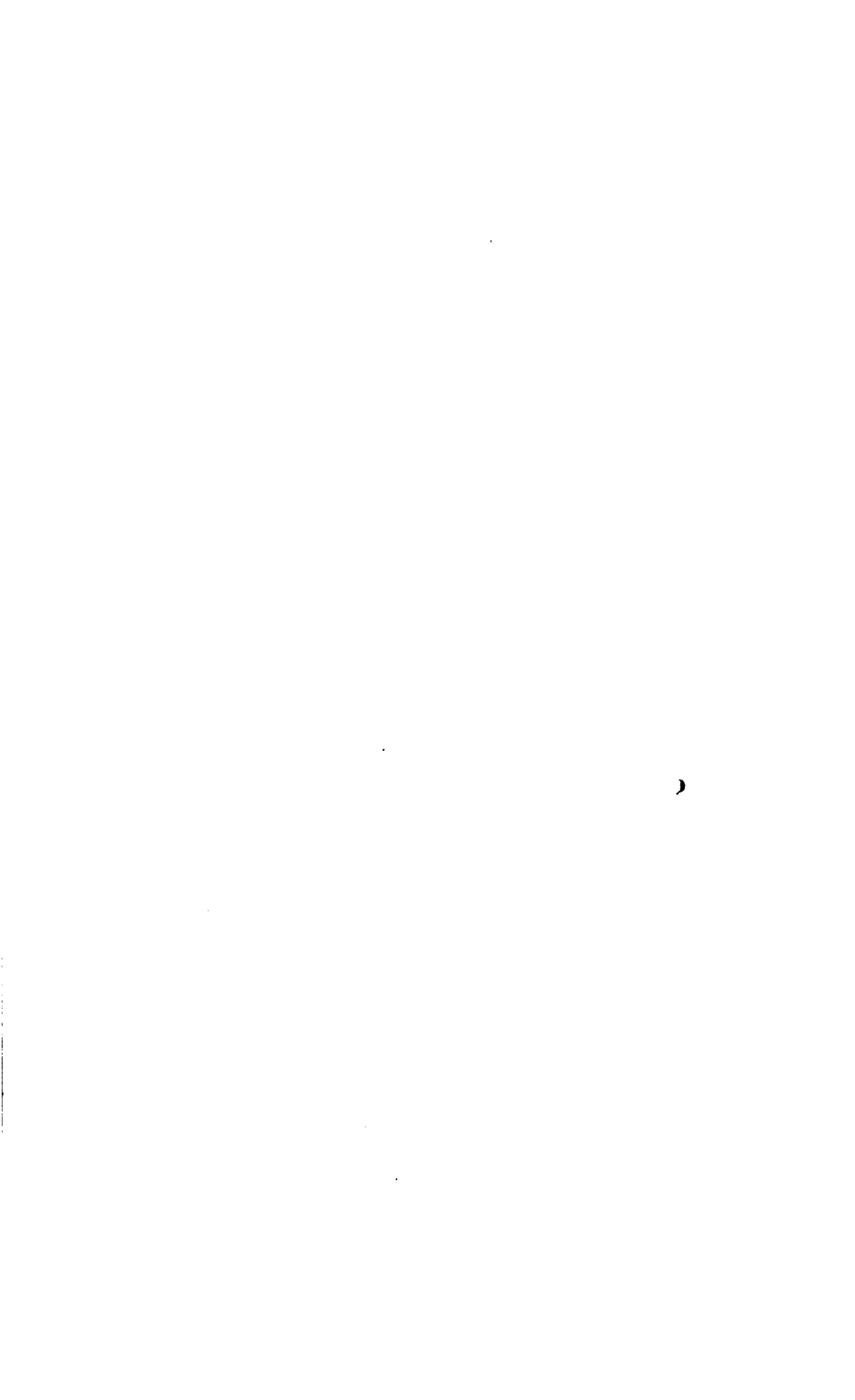
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



PE
J
J
V.



PB
J2
JE
v.3



THE JURIST,
OR
QUARTERLY JOURNAL
OF
JURISPRUDENCE
AND
LEGISLATION.

Qui juris nodos, et legum ænigmata solvat.—Juv.

VOL. III.

LONDON:
PRINTED FOR BALDWIN AND CRADOCK.

1832.

C O N T E N T S.

	Page
ART. I.—ON THE EXCLUSION OF EVIDENCE	1
ART. II.—HISTORICAL ILLUSTRATIONS OF THE ENGLISH LAW..	29
No. I.—The Judges.	
ART. III.—CHANGES IN FRENCH LAW.....	37
Some Account of the Changes which have taken place in France, in the Electoral Laws, the Municipal Institutions, the Organization of the National Guard, and, generally, in the Legislative, Administrative, and Judicial Branches of the Government, since the Revolution of July, 1830.	
ART. IV.—HISTORY OF LAW REFORM	55
ART. V.—THE BARRISTER, No. 2.....	94
ART. VI.—MEMOIR OF ALBERICUS GENTILIS.....	100
ART. VII.—AUSTIN'S LECTURES ON JURISPRUDENCE	105
The Province of Jurisprudence Defined. By John Austin, Esq., Barrister at Law.	
ART. VIII.—WAKEFIELD ON THE PUNISHMENT OF DEATH	123
Facts relating to the Punishment of Death in the Metropolis. By Edward Gibbon Wakefield. Second Edition, with an Appendix, concerning Murder for the Sale of the Dead Body. 8vo. London, 1832.	
ART. IX.—PARLIAMENTARY PAPERS, &c.	130
Summary Statements of the Number of Criminal Offenders committed to the several Gaols in England and Wales, during the Years 1823—1829 inclusive, &c. &c.	

**Summary Statements of the Number of Criminal Offenders
committed to the several Gaols in London and Middlesex
during the Years 1823—1829 inclusive, &c. &c.**

**Extract from the Report of the Keeper of the State Prison
at Auburn,—U.S.**

Intelligence.

THE JURIST.

APRIL, 1832.

ART. I.—ON THE EXCLUSION OF EVIDENCE.

If Mr. Bentham had made no contributions to the science of jurisprudence beyond the volumes which are now before us,* he would yet have presented a most valuable addition to the library of the jurist, and his name would deservedly be ranked among those of the most eminent promoters of law reform. Unfortunately, these subjects, although they are rapidly forcing their way into notice, have not as yet become popular, either amongst the class of lawyers, or amongst the public at large; and from this circumstance, as well as from the bulky size of the work, it seems not likely to meet with that general attention which it deserves. We cannot, therefore, better employ a few of our pages than in laying before our readers some account of a part of the contents of these volumes.

It is scarcely necessary to observe, that rules for the taking of evidence form an essential part of every system of law. It is from *evidence* that the judge must, in each case, draw his conclusions as to the state of the *fact*, upon which he may afterwards proceed to the due application of the law. However complete and precise may be our definitions of civil rights, however appropriate and well devised the punishments which are denounced against the violation of those rights, and however well constituted the judicial establishments by which the civil and penal laws are to be enforced, the good intentions of the legislature will be frustrated, unless such rules be laid down for the collecting of evidence as may enable the proper tribunals to form correct conclusions on the state of the fact.

Mr. Bentham has, in the present work, entered into a very

* *Rationale of Judicial Evidence* specially applied to English Practice. From the MSS. of Jeremy Bentham, Esq. 5 vols. 8vo. London.

complete and masterly examination of the whole subject of evidence, pointing out the rules which he conceives to be best calculated to promote the object in view, with the reasons for his opinions, and commenting on the defects in the practice of the different English courts of justice and in the Roman law. We shall not attempt to follow him through so wide a field; but we shall, for the present at least, confine ourselves chiefly to that part of the subject which relates to the *exclusion of evidence*—the part in which the practice of the English courts of common law seems to be more peculiarly defective.

Two reasons have been stated for excluding evidence in certain cases, viz. the avoiding of delay and expence, and the apprehension of misdecision on the part of the judge.

There can be no doubt that delay and expence must, in some cases, constitute a sufficient ground for the exclusion of evidence. To take, for example, an extreme case put by Mr. Bentham:—Suppose that the testimony of a witness, who happens to be in the East Indies, is required, in order to enforce the payment of a small fine, for the infraction of some regulation of police: it is obvious, that in such a case the necessary delay and expence would much more than counterbalance any advantage to be derived from the attendance of the witness. Such is the principle on which the legislature or the judge ought to found their decision on all similar questions. They must consider whether the evils resulting from the production of the evidence preponderate over those of neglecting to enforce the law. In some cases they may be able to steer a middle course, by permitting the production of evidence of an inferior kind,—of written, for example, instead of oral testimony. In others, where there may be a probability of the evidence in question becoming attainable at some future period, it may be found expedient to allow of a provisional decision, requiring at the same time that security shall be taken from the successful party, in case it should be found necessary, on the subsequent production of the evidence, to reverse the judgment. For a more full development of all these questions we must refer our readers to Mr. Bentham's work.

Secondly, it is said that the apprehension of misdecision on the part of the judge is, in certain cases, a sufficient reason for excluding evidence; or, in other words, it is asserted that there are certain articles of evidence which are more likely to lead the judge to a wrong than to a right conclusion; and that it is in the power of the legislature to point out beforehand what these articles of evidence are, so as to exclude them by general rules. Such, for instance, it is said, is the evidence of persons having an interest in the result of the cause, of persons who have been previously convicted of offences against the law, and of many others to which we

shall have occasion to refer hereafter. This is a subject which deserves the most serious attention of all who are friends to the due administration of justice, as these questions are of constant occurrence in every one of our courts of common law; and as it must be admitted that their rules on this subject are strangely at variance with each other, and are founded on no general principle, if not utterly inconsistent with reason and justice.

In entering upon this subject, the question naturally suggests itself, what would be the conduct of a sensible man, unfettered by rules of law, in endeavouring to inform himself upon a question of fact? What, for instance, would be the conduct of a master of a family in settling a dispute between two of his children or servants? Would he resolutely shut his ears against a part of the evidence? Would he refuse to hear one witness, because he might have some interest in the decision of the dispute; another, because he had, at some former period of his life, been guilty of deception or some other offence; and a third, because he was of too tender an age to have clear ideas on the nature of the obligation to speak the truth? Would he not, on the other hand, instead of rejecting the testimony, consider these circumstances only as reasons for hearing the evidence more patiently, and sifting it with greater care? Instead of refusing to hear the story of an interested witness, he would rather examine the nature and extent of the interest, so as to be able duly to appreciate the value of his testimony; and in case the tendency of his evidence should prove to be opposed to his interest, this circumstance would of course add to its weight. He would, moreover, be careful to notice how far the different parts of the story were consistent with each other, how far they were confirmed by the testimony of other witnesses, and whether the evidence was consistent with such known facts as it was impossible to falsify. Lastly, he would observe the manner in which each witness delivered his testimony, and whenever there appeared to be ground for suspicion, he would strictly cross-examine him, so as to obtain unpremeditated answers to unexpected questions; and he would thus, in some cases, obtain the most satisfactory evidence from an unwilling witness.

Of course it is not meant to assert, as some writers seem to suppose, that precisely the same course of proceeding, which is found to be conducive to the ends of justice in the domestic tribunal of a private family, would be applicable to the practice of courts of law. But, at any rate, it rests with the advocates of the system of exclusion to establish the propriety of the exceptions; and it may be most useful to inquire whether any just grounds can be shown for so wide a departure from this natural system of procedure as is displayed in the practice of the English courts of common law.

It is not very difficult to point out some of the causes which

have given rise to the English system of excluding evidence, and to show that, whatever may be the tendency of the rules in question, they originated rather in the ignorance than in the deliberate wisdom of our ancestors. It was very natural that, in the barbarous ages, credit should be attached to evidence, with reference rather to the number of the witnesses than to any other circumstance. It was easy for the most uninstructed person to perceive that, if ten witnesses gave an account of a matter of fact, whilst five others gave a different report of it, the testimony of the larger number was to be preferred. But it was a much more difficult task, and one in all probability far exceeding the skill of the judicial tribunals of an uncivilized people, to examine all the various and minute circumstances by which the credibility of each witness might be affected, so as to give to every particle of evidence its due weight. Thus it will usually be found that, amongst all nations in an early stage of civilization, the number of the witnesses is the chief consideration in estimating the value of evidence. According to the laws of the Hindoos, as well as by the Gentoo code, the evidence of three witnesses is required for the decision of every question. And, by the common law of England, two witnesses are required to establish a charge of perjury; because it is said that, "otherwise, there would only be one oath against another;" as if the value of an oath were always the same, independent alike of the character of the witness and the circumstances under which his testimony might be given. Or, to take one still more striking example from our own law:—In certain civil actions a defendant was allowed to avail himself of what was called *wager of law*; that is to say, he had only to come into court in person and swear that he did not owe the sum demanded of him, at the same time bringing with him a certain number of his friends, who were to swear, *not* that they knew any thing of the matter, but simply that they believed his statement; and this was considered in law a conclusive defence to the action. Nay, strange as it may appear, such is the law of England even at the present moment, and it is not long since a person was known to avail himself of such a defence.*

These few instances will be sufficient to illustrate the tendency of all uncivilized nations, and of our own ancestors amongst the rest, to estimate evidence rather according to the number of the witnesses than according to the weight of their testimony. In these cases, however, a difficulty would force itself upon the attention of the judge. Witnesses would occasionally present themselves who might have a strong pecuniary interest in the event of

* *King v. Williams*, 2 Barn. and Cress. Rep. 538.

the cause, and whose testimony therefore ought not to be received without the greatest circumspection. Or, evidence might be offered even from still more suspicious sources, from the mouth of a witness, for instance, of notoriously bad character, who had already been convicted of serious offences, and under peculiar circumstances, which might render his testimony almost wholly worthless. It would manifestly be improper to allow such evidence to be received on the same footing as that of ordinary witnesses, or, in other words, to allow it *to count as one* in the list. To solve this difficulty, the expedient that would naturally present itself would be to strike out the evidence altogether, or rather to refuse to hear it at all. And this plan would be the more likely to be adopted by the judge when he recollected that the evidence was to be weighed, not by himself or by an instructed person qualified to make all the requisite allowances, but by an illiterate jury wholly inexperienced in such matters. He might, therefore, exclude the evidence, not only with the best possible intentions, but probably without any injustice in the particular case. Now, when it is recollected that the common law of England has been framed not with a deliberate and enlarged consideration of the best means of promoting the object in view, but that it has gradually grown up out of the decisions of judges in particular cases; it is not difficult to understand how a number of decisions, like the one we have supposed, would lead to the establishment of a general rule, and how it would thus become a fixed principle of law, that no witness was competent to give evidence who had any pecuniary interest in the event of the suit, or who had been convicted of a serious offence.

In attempting this explanation of the origin of these exclusive rules, we only wish to satisfy our readers that the rules in question have grown out of circumstances quite independent of their merits, that they have not been framed upon any systematic principle, and that they have not been adopted either by legislators or judges with a deliberate consideration of the ends of justice; so that the question of their utility is still quite open to discussion. It has indeed been frequently asserted, and, above all, by members of the legal profession, that it is a peculiar excellence in a system of law, that its rules should have grown up from time to time out of the decisions of the judges, because it is said that, when framed in this manner, they will be found best adapted to the wants of the public. If by this statement it is merely meant to assert that it is impossible to have a *perfect* code of laws, but that its different enactments must receive continual additions or modifications as new cases arise, the fact is beyond all dispute. But if it be maintained, that these alterations and additions ought not to be framed with a full consideration of all the circumstances which have occurred or may be likely to occur in different cases, and with a view to the general

ends of justice; but that they should rather be deduced from the decisions of individual judges in particular cases, decisions which must often be influenced by the peculiar circumstances of each case, especially when made in uncivilized times or by unenlightened tribunals: if such be the meaning of the argument, the simple statement carries with it its own refutation, and it presents not the shadow of an objection to the present inquiry.

Before we proceed to examine separately the different grounds of exclusion adopted by the law of England, we may mention one erroneous principle which appears to pervade them all. It seems to be assumed that truth and falsehood are, in all cases, a matter of indifference to the speaker, and that mendacity is to be expected as a matter of course, in consequence of the operation of the slightest motive, or even without any motive whatever. Such a conclusion is notoriously contrary to the fact. The most confirmed liar tells truth ninety-nine times out of a hundred. Truth is the general rule; falsehood a rare exception. And this for a very simple reason. The truth is that which naturally suggests itself, whilst falsehood requires invention and premeditation; not to mention that, in a great majority of the ordinary occurrences of life, veracity is the best means of obtaining our objects; and that a habit of adhering to the truth is thus usually acquired even by persons who are not under the influence of higher motives.

Amongst the different reasons for excluding evidence, pecuniary interest appears at first sight to be one of the most reasonable. It may be said, with perfect justice, that if a witness have a direct pecuniary interest in the result of a cause, that circumstance may afford good ground for distrusting, or even for altogether discrediting, his testimony. But the question is, not whether the pecuniary interest ought to be taken into the account as tending to diminish or to destroy the value of the evidence; but, whether the smallest portion of interest of this kind be, in all cases, a sufficient ground for rejecting, or rather, for refusing to hear it. Or, in other words, the question is, whether a man of good character and large fortune will certainly perjure himself, in all cases, for a few pence or shillings. It may be said that this is an extreme case. It is so; and it is purposely selected, in order to render the absurdity of the rule the more glaring. But it cannot be denied that cases of equal practical absurdity have occurred, and are occurring every day, in our courts of justice. Every one in the least conversant with the practice of the law, is aware that witnesses are frequently rejected on the ground of their possessing some interest in the event of the cause, when that interest is such as would not diminish the value of their testimony in the slightest degree in the opinion of any rational being. Nor can this be otherwise so long as witnesses are rendered incompetent to give evidence by pecuniary interest. For

this is a case in which there is no possibility of drawing a line. The same sum, which would act as a strong temptation to a poor man, might, by a rich man, be esteemed scarcely worth consideration. And, even in the same station of life, there is the greatest possible difference in the moral qualities of different individuals. There are some men who are incapable of being corrupted by any amount of pecuniary interest, whilst there are others, whose virtuous principles are too weak to resist a very slight temptation. It is impossible, therefore, to lay down any general rule by which the operation of pecuniary interest may be prevented, without, at the same time, excluding valuable evidence, which is wholly unimpaired by its influence.

Even were it possible to form a classification of individuals according to fortune and moral character, so as to apply a general rule; still, the utmost that could be accomplished would be the exclusion of the testimony in cases where the interest was supposed to offer a strong temptation to perjury. But it by no means follows that every witness is ready to yield to a strong temptation, or, even were this certain, that his testimony may not prove of considerable value. Nothing is more common in our courts of justice than to see truth extracted by artful questions from the most unwilling lips. And even when the witness comes into the box with a premeditated falsehood, we often see his mendacity exposed by a skilful cross-examination; and the very falsehood itself, with the detection, may form a valuable article of evidence, and prove of essential service in the discovery of the truth. So that even if it were possible to confine the operation of the exclusive rule to the testimony of witnesses supposed to be under a strong bias, this limited exclusion might, in many cases, prove highly injurious to the ends of justice.

The English law, however, is far from succeeding in its object, erroneous as that object seems to be. Not only, on the one hand, does it reject the evidence of persons who are only nominally, and not really, under a pecuniary bias; but, on the other, it admits the testimony of witnesses, who have in reality the strongest possible pecuniary interest in the result of the cause. For whilst it carefully excludes all evidence which is tainted with what are called *legal* or *vested* interests, it admits, without hesitation, all interests in *expectancy*, which are often, to all intents and purposes, as certain as those which are vested, and must, therefore, form an equally strong ground for bias. To take an example:—The title to an estate is disputed; the present possessor is of great age, or afflicted with a fatal disorder, and he has only one son, who has every reason to expect that he will inherit the whole of his father's property, and who, in the meantime, is supported out of the income derived from the estate in question. Under such cir-

cumstances, the English law considers the son a perfectly unexceptionable witness; but if the smallest portion of the estate had been entailed upon him, no matter how remote or uncertain his prospect of succeeding to the property, his testimony would have been rejected as inadmissible. Such are the inconsistencies which must necessarily exist under the exclusive system.

We have thus attempted to show that it is not practicable, by any general rules, to reject the testimony of such persons exclusively as are likely to be biassed by pecuniary interest; and that, if it were practicable, it would not be desirable. But granting for a moment, for the sake of argument, both these points, it may be asked, could any useful object be attained without carrying the exclusion much further? Why is it against *pecuniary* interest alone that it is thought necessary to take these precautions? Is the love of money the only motive which can give birth to mendacity? May not the same effect be produced, to an equal or greater extent, by natural affection, love, friendship, revenge, vanity, and a thousand other passions to which human nature is subject? Is it reasonable to exclude the evidence of a witness because he may have some insignificant sum of money depending upon the result of the cause, when you admit his testimony without scruple, although the life of his child, his friend, or his mistress, may be at stake? It is unnecessary to attempt to prove the impossibility of providing against these various and indefinable interests by any exclusive rule. Nor is it pretended that any bad effects result from the admission of such evidence. It is true that the existence of a bias in the mind of the witness must of course render his testimony less valuable. But, on the other hand, it must be recollected that there are various securities against misdecision on the part of the judge, even in the case of the most strongly biassed or most mendacious witness. For instance, the nature and extent of the interest should, in all cases where it is possible, be made known, so that due allowance may be made in estimating the value of the testimony. Again, the appearance and manner of the witness may furnish some useful indications as to the truth of his statements. A skilful cross-examination will contribute still further towards this object, and will serve in many cases to expose mistakes and falsehood. Lastly, a careful comparison of the different parts of his story with each other, as well as with the evidence of other witnesses, will assist the hearer in forming a correct judgment as to the state of the fact. It is true that these securities will not ensure, in all cases, a correct conclusion. The best testimony does not reach beyond a probability. But it may be safely asserted, that they will, in a very great majority of cases, enable us to form a correct judgment; and that, at all events, the danger of

misdecision would be infinitely greater by rejecting the evidence, than by receiving it subject to these securities.

The same principles apply to pecuniary interests, and with still greater force. For it must frequently be quite impracticable to ascertain all the various interests, arising from his private circumstances, by which the mind of a witness may be affected; and when ascertained, it must be impossible to form even an approximation towards a just estimate of the force with which such passions as love, friendship, or revenge, operate upon his mind. But the exact amount of pecuniary interest is, in general, ascertainable numerically; and we may usually form something like an estimate of the probable force of the motive, by a knowledge of the circumstances of the party, and of his condition in life. When, therefore, the interest is pecuniary, there is the less danger of its being either overlooked or incorrectly appreciated; and the selection of this particular species of evidence for exclusion seems to be a peculiarly unwise provision of the English law.

We need not go farther than the practice of our own courts for a proof of the inutility of the exclusive rule. We have already seen that, whilst the testimony of persons possessing what is called a legal interest in the question in dispute, is in general rigorously excluded, those who have an interest in expectancy are received as unexceptionable witnesses. And we have also seen that these latter interests are often as *real* as the former, and are equally powerful in their tendency to bias the mind of the witness. Yet it has never been asserted that any injurious consequences have resulted from the admission of such evidence, nor has it ever been proposed to lay any restrictions on its reception.

Again, not only have English lawyers and legislators thus tacitly admitted the impolicy of the exclusive rule, but they have gone farther, and have, by express statute, exempted witnesses under particular circumstances from its operation. The fact is, that the absurdity and injurious consequences of the rule were in some cases so glaring, that its continuance could no longer be tolerated; but instead of taking the whole system into consideration, with a view to a rational and effectual reform, the legislature has contented itself with relieving the public from its operation in the particular instances in question: thus, by a system of petty legislation remedying only a part of the evil, and rendering the different parts of our law inconsistent and contradictory. In this way it is that the testimony of informers has been admitted in certain cases, even although they may be directly interested in the recovery of the penalty; and that in certain actions against parishes and hundreds, the evidence of inhabitants has been received. But these exceptions to the general rule have only operated as a partial mitigation to the evils of the exclusive system; and instances still occur of

the most sweeping exclusions on account of a merely nominal interest. Thus, to give only a single example:—An action was tried at the York Lent Assizes, 1829, before Mr. Justice Bayley, to determine a right, claimed by the proprietors of an ancient mill, of preventing the inhabitants within the soke of Wakefield, an extensive and populous district, from making use of any ground corn except such as had been ground at the soke mill; and it was decided that none of the inhabitants of this district were capable of giving evidence for the defendant, because they were supposed to have an interest in the event of the cause. So that in this single instance the rule in question served to exclude the testimony of many thousands of persons, and those the very individuals amongst whom alone the necessary evidence could be expected to be obtained.

Having now concluded the first division of our subject, and having attempted to show that pecuniary interest constitutes no sufficient ground for the rejection of testimony, we proceed next to examine another extensive, and not less important principle, which has been adopted by the English law in the exclusion of evidence, viz. the propriety of rejecting the testimony of a witness on account of improbity of character. The reason which is assumed for this exclusion is very different from the one adopted in the former case. In the one instance, the witness is rejected because he is supposed to have a motive to speak falsely; in the other, because his character is supposed to be such as to render him liable to be acted upon by such a motive. In the one case, strangely enough, perjury is supposed to be the necessary consequence of the slightest motive, whatever may be the character of the party on whom the motive has to act. In the other, it is still more strangely assumed, that all persons of bad character will necessarily perjure themselves, with or without a motive. In other words, we are to conclude that a witness of bad character will speak falsely, not only when it is his interest to do so, but also when he has no interest in the matter, or even when his interest is opposed to the effect of his testimony; and that under no circumstances can his evidence be of service in the discovery of the truth. Take even the strongest case of improbity (at least so far as it is likely to affect veracity): suppose the witness to have been already convicted of perjury; still it does not follow that, because he has once been guilty of falsehood, he will never speak truth again. It would be most unreasonable to conclude that, because he had on one occasion given false testimony, when under the influence of a strong motive, with the view, for instance, of saving the life of a near relation or friend, he would therefore be ever after ready to commit the same offence with or without an object. Yet the English law goes still farther, and excludes the evidence of all persons who

have been previously convicted of a capital felony (or even of any felony, provided they have not undergone the punishment),* including under this term a very extensive class of offences, many of which furnish at best but very slender indications as to the question of the witness's veracity.

Let us not be understood as disposed to undervalue the importance of forming a just estimate of the witness's character, when we are employed in weighing his testimony; nor as under-rating the difficulty of forming a correct judgment upon this subject. In cases where the witness is in any way interested in the result of the cause, or where there is conflicting testimony, it is of the greatest importance to form a just estimate of his moral character, and this is often a point of the greatest difficulty. It is to be hoped, however, that in a great majority of cases an erroneous decision may be avoided, if care be taken to make proper use of the different tests and securities which we have already enumerated. At all events, real danger exists only in those cases in which the character of the witness is unknown, not where it is acknowledged to be infamous. We need be under no apprehension that a judge or jury will attribute too much weight to the testimony of a convicted felon; they are more likely to err on the opposite side.

It is indeed scarcely possible to believe that fear of misdecision has been the real motive for excluding the evidence of convicted malefactors. It is more likely that the exclusion has been intended to operate as a just stigma upon their character; in other words, that it has been imposed as an additional punishment for the offence of which they have been guilty. If such be its object, it is scarcely possible to conceive a punishment more entirely inoperative, or more completely at variance with all the ends of justice. In the first place, it is remote, uncertain, and unequal. It falls exclusively upon those offenders whose evidence may happen to be required in a court of justice, and probably long after the commission of the offence. Secondly, whilst it operates as a deep disgrace to the reformed offender, it is felt as no punishment at all by the profligate and hardened culprit, who may in some cases find it a positive advantage to be disqualified from giving his testimony in a court of justice. Lastly, whilst it is thus wholly in-

* This rule, that, in cases of felony not capital, undergoing the punishment shall restore the competency of the criminal as a witness, has been adopted by Mr. Peel in his late Acts for the Consolidation of the Criminal Law. It is not, however, very easy to understand on what principle it is founded. Is it really supposed that the criminal is necessarily reformed by undergoing the punishment? Or what is the legal fiction implied? Not that we object to any rule for the admission of additional evidence; but the simple fact that it is impossible to pass measures for the partial reform of this branch of our law, without involving ourselves in numberless contradictions and inconsistencies, is a strong proof of the propriety of revising the whole system.

operative as a punishment to the guilty, it is frequently a cruel infliction upon the innocent suitor, who is thus debarred, by the want of legal evidence, from asserting his rights; upon him, for instance, who has been robbed, or beaten, or injured, and who is denied all redress, because the only witness of the act happens to have been convicted of some offence against the law half a century ago.

Not only is the English law wholly inconsistent with reason and justice in excluding the evidence of convicted offenders and of interested persons, but it is also utterly at variance with itself, as; in some instances, it admits evidence which is tainted in the greatest possible degree both with interest and improbity united. We allude to those cases which are constantly occurring in our criminal courts, where an accomplice is allowed to give evidence against his companions, on the understanding that, in case his testimony shall prove satisfactory to the prosecutor and the court, he will escape punishment; but that otherwise he will be liable to be forthwith put upon his trial for the crime in question, and perhaps also for other offences. So delicate, we have seen, does the law of England profess to be as to the quality of the evidence which it receives, that it refuses to hear a witness, if he be supposed to be under the influence of the slightest motive to mendacity; or even if he be supposed peculiarly liable to be influenced by such a motive, though the motive itself may not exist. It assumes that the most respectable witness will perjure himself in consequence of the slightest temptation, and that a convicted felon will perjure himself without any motive whatever. And yet, in the case before us, it admits the testimony of the most worthless of mankind; of one who has not only lived in the habitual violation of the laws of his country, but has been guilty of the basest treachery towards his own friends and companions; and that too, under circumstances of the strongest possible interest, when his avowed motive for offering his evidence is to save himself from the gallows. Yet it has never been affirmed by any of our judges or lawyers that injurious consequences have resulted from the practice, or that this part of our criminal law is in want of revision. Can it then be denied that this is a perfect practical refutation of the arguments in favour of the exclusive rules; and are we not justified in asserting the propriety of adopting a more consistent and rational system?

It is true that it has been the practice of our courts to receive the evidence of accomplices with suspicion, and that our judges have usually cautioned the jury against giving credit to such testimony, when unconfirmed by other evidence. But this is all that we could desire, and is perfectly consistent with the principles which we have been endeavouring to establish. We only contend that in other cases, where the danger of deception in consequence of interest or improbity is much smaller in amount, the testimony

should be admitted in a similar manner, every means being taken to expose the real magnitude of the danger, and due allowance being made in estimating the value of the evidence.

There remains for our consideration another principle, which has been adopted as a reason for a general exclusion by the English law; we mean, the incompetence of witnesses on account of a want of religious principle. The law upon this subject has not been laid down in a very consistent and uniform manner by different judges; but, according to the most liberal interpretation, it appears that no witness is competent to give evidence in a court of justice, unless he believes in a future state of rewards and punishments, or, at all events, in the existence of a God, the avenger of falsehood. In other words, it is assumed that there are no other motives to veracity, except those which arise from the religious sanction. Nothing can be farther from our wish than to undervalue the influence of religion upon the conduct of mankind. But when we are deciding upon a question of legislation, it is necessary to recollect that there are other motives, which also exert a powerful influence over their actions. For instance, in the particular case before us, that of adherence to veracity, there is, in the first place, a universally acting motive in the love of ease, because recollection requires less exertion of the faculties than invention; and it is much easier to tell the simple truth, than to frame a false story, by which we may be involved in difficulties and contradictions. Secondly, there is the fear of incurring the punishment denounced by the law against deliberate perjury. Thirdly, there is the desire of preserving the good opinion of the persons amongst whom we live, and the fear of incurring public disgrace and odium. Lastly, there is that principle of our nature which is usually known by the name of conscience, a principle which, though it may depend solely upon association, and may have its origin in the motives we have already enumerated, is yet frequently sufficiently powerful to direct our actions in the absence, or even in defiance, of those motives. Now, whatever may be our opinion as to the force of these principles of action, as compared with that of the religious sanction, it cannot be denied that they may, and often do, exercise a powerful influence on human conduct. Indeed it is the common complaint of divines, that even their own followers are too apt to be influenced by worldly motives, rather than by those of a higher order. And, without referring to the history of past ages, our own times may furnish us with numerous instances of avowed unbelievers, who have yet led the most respectable and moral lives. To contend, therefore, that the religious sanction (however great its importance) is the *only* motive to veracity, and that the evidence of an unbeliever is under no circumstances deserving of credit, is, to say the least of it, a most gross and palpable exaggeration.

But if the general principle of excluding witnesses on account of want of religious belief is considered impolitic and unreasonable, the absurdity will appear still more glaring, when we consider the mode in which this object is effected by the English law. Any objection to the competence of a witness on this ground must be made on his entering the witness box, and before he is sworn. He must then be questioned as to the nature of his religious belief, and in case his answers prove unsatisfactory, he is forthwith dismissed from the box. Let us consider for a moment the effect of this proceeding. The law declares that no unbeliever is worthy of credit, even when upon his oath. Yet in order to ascertain the point, whether the witness be an unbeliever or not, it relies upon his own assertion, unconfirmed even by the usual sanction of an oath. Suppose the witness to be really an infidel, he will either deny the fact or admit it. If the presumption of law, that all unbelievers are regardless of veracity, be well founded, he will of course deny it, and in such case nothing is gained by the question, except the commission of a gratuitous falsehood. But if, on the other hand, the witness should admit his unbelief, this very fact, so far from proving him unworthy of credit, demonstrates in the clearest manner his strong attachment to veracity; for it proves that, sooner than be guilty of a falsehood, he is willing to forfeit an important political privilege, and to incur the odium of the public. To sum up in a few words the nature and effect of this exclusive rule: the law assumes that a certain class of witnesses are unworthy of credit; and, with a view to their rejection, it applies a test by which none are excluded, except those few (if any such there be) who are distinguished by a very uncommon attachment to veracity. It is doubtful whether the whole history of mankind can furnish an instance of a legal rule more pregnant with contradiction and absurdity.

It may possibly be contended that the exclusion of the testimony of unbelievers is intended not so much to serve the ends of public justice, as to fix a stigma upon their opinions; in other words, that the real object of the rule is, not the due decision of the cause, but the punishment of the witness: a mode of proceeding which reminds us of a jury in a country town, who, when called upon for their verdict, acquitted the prisoner, but found the *witness* guilty! But, to be serious, if it be really determined that speculative opinions are proper objects of punishment, it will scarcely be denied that the offenders ought to be prosecuted according to the ordinary forms of justice, and that the punishment ought to be imposed equally upon all. In the present case, the penalty falls exclusively upon those few persons who are called as witnesses in a court of justice, and even out of that small number, only upon such as have the honesty to declare their opinions;

and it may fall most heavily upon the innocent and unfortunate suitor, who is thus denied all legal redress.

Entertaining, as we do, a very strong opinion of the absurdity and impolicy of the existing practice, we lament that it should have received the sanction of so distinguished a statesman as the present Lord Chancellor, and still more, that his approval should have been expressed in his justly celebrated speech in the House of Commons on Law Reform. We feel ourselves the more called upon to notice this subject, and express our dissent, as the speech in question abounds in the most excellent suggestions for the improvement of the law of evidence. The passage of the speech to which we refer is as follows:—"There is, in my opinion, no reason for excluding any individual, be he of what religion, sect, or persuasion he may, from giving testimony in cases of every kind, provided he believes in the existence of a God, and a state of future rewards and punishments, and is not openly infamous by sentence of a Court."* Now (not to mention that the exclusive rule, as thus stated, is carried farther than by several of our judges, and would exclude the evidence of some conscientious Jews, and certain other sects, who acknowledge a God the avenger of falsehood, though they do not believe in a future state of rewards and punishments) we cannot but enter our protest against every syllable of the proposed exceptions to the general rule of admissibility; and we are confident that no reason can be given for excluding the evidence in question, which will not apply equally to other testimony, which Lord Brougham is fully prepared to admit. We have already shown that the English law is wholly inoperative in its attempt to exclude the evidence of such unbelievers as are regardless of veracity; and as to the witness who is "openly infamous by sentence of a Court," we have contended that it is the very *openness* of his infamy which removes all danger of deception.

Connected with the question of incompetence on account of want of religious principle, is the subject of the incompetence of infants, on account of the want of due instruction. It has been decided that the evidence of an infant cannot be received in a court of justice, unless it appears that he understands the "nature and obligation of an oath," that is to say, the religious obligation to speak the truth. This is again a question as to motives; and the point for our inquiry is, whether the religious sanction is likely to be the sole or the most powerful motive influencing the minds of young children in giving their evidence. It cannot be denied that the hope or fear of praise or blame, and

* Hansard's Parliamentary Debates, vol. xviii. (new series) p. 221.

of reward or punishment, on the part of their parents or guardians, constitutes the principal moral sanction of young children; and that, at any rate, these motives are much more powerful in influencing their conduct, than any necessarily imperfect notions which they may possess on religious subjects. But even were the case otherwise, how is the existence of any religious principle ascertained under the present system? A child is asked, what will become of him after death if he tells lies, and he answers that he will go to a bad place, or that he will be burnt in fire. This only proves that the child has been instructed to give such an answer to such a question, and affords scarcely an indication of the existence of any religious principle whatever. Indeed, where there is any fraudulent intention on the part of the infant's friends, he will be quite sure to be well tutored on this subject. The fact is, the principal security against the mendacity of children consists in their artlessness, and in their utter inability to maintain a false story under a skilful cross-examination; and the security against their mistakes is in their vivid memory for recent events. It is therefore of consequence that the evidence of children should be submitted to the test of a cross-examination, and that it should in all cases be taken as soon as possible after the occurrence of the event to which it relates. Yet it has been a common practice with our judges, when an infant witness has not given a satisfactory account of the state of his religious belief, to order the trial to be postponed till the next assizes, giving directions that the witness shall in the mean time be instructed in the catechism; thus at the same time subjecting the accused to the inconvenience of a long imprisonment, and greatly diminishing, in our opinion, the chance of correctness on the part of the witness.

Such are the principal rules by which *classes* of persons are rendered incompetent to give evidence in English courts of justice. There remain certain other exclusive rules, which apply against particular individuals in consequence of the relation in which they stand with regard to the suit in question.

Of these, the most remarkable is the rule which excludes in all cases the testimony of the parties in the cause. And we may here notice, as a singular inconsistency in the different branches of our law, that in our courts of equity, not only is the testimony of the parties admitted, but it usually constitutes the most important portion of the evidence. Yet in those courts the testimony is received in writing, so as to afford every opportunity to premeditation and deceit, and without the security of an oral cross-examination, as in the courts of common law. After what has been already said with respect to the exclusion of evidence on account of interest, it is unnecessary to dwell upon the question

of the rejection of the testimony of parties, which may be considered as forming only a particular case under the general rule. There is, however, this distinction to be observed, that in the case of parties, the amount of the interest must be always known, and is necessarily presented to the attention of the court, thus greatly diminishing the danger of deception.

It must have frequently occurred to those who are acquainted with the practice of our criminal law, that the rule of excluding the evidence of parties is often the source of great hardship to the accused; because the prosecutor, not being technically considered to be a party in the cause, or to have any interest in the event, is allowed to give his evidence, whilst that of the accused is altogether excluded. For, although the prisoner is permitted to state any facts in his defence, it is usual to inform the jury that these statements, not being made upon oath, are not *evidence*, and that it is their duty wholly to discard them from their minds in deciding upon their verdict. Take, for example, a case of assault arising out of a quarrel, and suppose no one to have been present at the transaction except the prosecutor and the accused, and that the question in dispute is, which of the parties committed the first assault. Under such circumstances, it is surely most unjust that the testimony of one party should be heard, and that of the other rejected. Yet charges of this kind are continually brought before magistrates for summary decision. And we will venture to assert that if in these cases the magistrates should adhere strictly to the rule of law, and should reject from their consideration every thing which is not legal evidence, they would frequently commit the greatest injustice. They would, in fact, be proclaiming to the world, that, in all cases where the parties themselves were the only witnesses, they should decide in favour of him who should contrive to be first in bringing his complaint.

The absurdity of this rule may be further illustrated by a case which recently attracted much attention, we mean that of Mr. and Mrs. Deacle, and Mr. Bingham Baring. In this case a magistrate was charged with having used unnecessary violence in the execution of his office, and in an action at law a verdict with damages was obtained against him. The subject was afterwards brought before the House of Commons, when it was stated that the defendant could have substantiated a satisfactory answer to the charge, had not his witnesses been disqualified by being joined with him as defendants in the suit; and an opinion seemed very generally to prevail through the House, that, though the verdict was strictly in accordance with the evidence, injustice had been perpetrated by this measure. Whether this opinion were well or ill founded, the case will equally serve to illustrate the

imperfection of the existing system, and yet not a single speaker in the debate adverted to this defective state of our law. Surely the House of Commons would have been occupied in a manner more consistent with its proper functions, and more advantageous to the public, if, instead of canvassing the merits of the parties in a particular case, it had been employed in amending the mischievous law under which the alleged injustice had been perpetrated.

If there be no just ground for rejecting the evidence of parties in their own favour, still less does there appear to be any reason for refusing to take due means to extract their testimony when it is likely to be against themselves. We have seen that scarcely any evidence is more satisfactory than that of a witness whose interest is opposed to the effect of his testimony. And it would seem unnecessary to add (except that there is no limit to the absurd assertions which have been made on this subject), that there is no reason for apprehension that an innocent person will confess a crime of which he is not guilty, and voluntarily subject himself to an undeserved punishment. The reasonable course with respect to the evidence of accused persons seems to be as follows: that, when they are first put upon their trial, it should be the duty of the presiding judge rather to encourage them to make a full confession of their guilt (in case they seem disposed to admit the justice of the charge), than to persuade them to put in a plea of *not guilty*; but if they persist in asserting their innocence, that they themselves, as well as the witnesses, should be strictly, but temperately, examined as to the facts of the case; leaving them at the same time entirely at liberty to decline answering at all if they think proper. Out of many objections which have been made to this course of proceeding, there is only one which has any plausibility. It has been said that, under certain circumstances, an innocent man might be unwilling to answer the questions which might be put to him, and that in such a case injustice would be done if his silence were to be construed as a presumption, or as evidence, of his guilt. To such an objection it need only be replied, that the silence of the prisoner would at the utmost be considered only as a circumstance of suspicion, and that it has never been proposed that any man should be convicted, unless his guilt has been satisfactorily established by other evidence. Let it be granted even that the silence of the accused ought under no circumstances to be considered as affording the slightest indication respecting the justice of the charge; still, this is no reason that his evidence should be excluded when he is willing, and perhaps anxious, to undergo an examination, and to give every explanation in his power. To an innocent man falsely accused, it must often be a source of satisfaction to have

the opportunity of undergoing a cross-examination, and of thus proving that the different parts of his story are consistent with each other, and with the known facts of the case. On the other hand, the hope of establishing the probability of his story will often induce even the guilty man, influenced by an overweening confidence in his own skill or good fortune, voluntarily to submit to an examination; and the probable result will be, either that his guilt is established out of his own mouth, or that evidence is obtained calculated to confirm or explain the testimony of other witnesses.

A great deal has been written upon this subject, to which it is very difficult to give any reply, because it is scarcely possible to understand the nature of the arguments intended to be conveyed. When, for example, the examination of a prisoner is seriously compared to the tortures of the Inquisition, and is represented as objectionable on the same grounds; or, when we are gravely informed that "human beings are not to be run down, like beasts of prey, without respect to the laws of the chace,"* we are at a loss to comprehend the meaning of the argument, and must therefore confess our inability to reply to it.

It is one of the most glaring defects of our law of evidence, that it resembles too closely the "laws of the chace," inasmuch as it too often offers to the accused a certain chance of escape, without reference to that object which ought to be kept constantly in view as the sole aim of the inquiry—the discovery of the truth. We may safely disregard the laws of the chace so long as we strictly observe those of reason and justice.

It seems not improbable that the prejudice, which undoubtedly exists in this country against the examination of accused persons, has arisen from the mode in which these examinations have been conducted in former times and in other countries, where they have frequently been enforced by torture, and when they have been employed not so much for the discovery of the truth, as for the purpose of extorting a confession which might serve as a pretext for the oppressive acts of a tyrannical government. It may also be ascribed perhaps, in some degree, to a just dislike of the system which is at present practised in France, where the examination is conducted by the presiding judge. It is scarcely possible for one person to cross-examine another in the presence of the audience of a crowded court of justice without his becoming in some degree a party in the cause. It is impossible that he can put the necessary questions without indicating to the audience the nature of the evidence which he expects to extract; and his self-love thus

* See *Edinburgh Review*, vol. xl. p. 166, and 169.

becomes interested in establishing the justice of his suspicions, which must produce a state of mind far removed from that impartiality which is becoming to his office. It is much better that the examination should be conducted by counsel, under the superintendence of the presiding judge, who should be bound to interfere for the protection of the prisoner, whenever he is treated with unnecessary harshness, or whenever unfair inferences seem likely to be drawn from his admissions. This interposition is sometimes required even in the case of an ordinary witness, and of course is much more necessary for the protection of the accused party himself, whose mind is more likely to be agitated and confused in consequence of the anxious situation in which he stands.

So far, at present, is the English law from sanctioning the examination of the accused, that, according to the practice of some judges, he is scarcely allowed to admit his guilt, even when desirous to do so. Nothing is more common in our courts, than to hear a judge advising, nay, sometimes almost entreating, a prisoner to withdraw a plea of *guilty*, in order that he may take his chance of escape in consequence of some defect in the evidence, or of some irregularity in the proceedings. It is scarcely possible to conceive a scene more disgraceful to the jurisprudence of a civilized country, or more inconsistent with the most ordinary sentiments of morality, than that an exalted minister of justice should, in the execution of his important office, publicly recommend the telling of a deliberate falsehood, for the avowed purpose of defeating the ends of justice.

Our law is, however, on this subject, as on many others, full of inconsistencies. At the same time that it will not allow a particle of evidence to be obtained from the accused at the time of his trial, it receives, without scruple, any confession which he may have previously made in writing, or even the report of any admissions which may have fallen from him in the course of conversation: thus excluding his direct testimony, whilst it admits hearsay evidence of any thing which may have dropped from his lips.

The same arguments, which we have used respecting the examination of accused persons, are also applicable to that rule of law, by which the evidence of a witness is excluded when it is calculated to criminate or to disgrace himself. If such evidence should lead to the conviction of the witness, this, instead of being an objection, is an additional argument in favour of its admission; the punishment of an offender being, in all cases, an advantage to the public. And, in case the testimony is only disgraceful to the witness, it is too much to expect that the ends of justice should be sacrificed to the feelings of an individual; although, of course, the exposure ought not to be greater than is absolutely necessary. It is said to be *hard* that a man should be obliged to criminate himself. If, by

hard, it be meant that it is *disagreeable*, it cannot be denied that it is disagreeable to every offender to be convicted at all; although it does not appear likely to make any great difference in his sufferings, whether the evidence on which he is convicted be obtained from his own lips or from those of some other person. At all events, it may be worth considering, whether it is a greater *hardship* that a guilty man should criminate himself, or that the public should be left without due protection for their persons and property.

A question has been raised between Mr. Bentham and his opponents, as to the propriety of the rule of law by which professional persons are precluded from disclosing in evidence facts which they have learnt from their clients in the exercise of their professional duties. Mr. Bentham contends that this rule affords facilities for the escape of the guilty, without giving the slightest additional protection to the innocent. He maintains that no innocent prisoner, or honest suitor, can have any reasonable objection to the disclosure of any communications he may make to his professional adviser; and, on the other hand, that the probability of such disclosure will operate as a powerful check to the guilty and dishonest in framing a false defence.

The objections which have usually been made to this argument are of the most inconclusive kind. They amount to little more than an expression of horror at the idea of lawyers betraying their clients, and of fear lest, under such a system, no honourable men should be found to enter into the profession. Such an objection betrays some confusion of ideas as to the nature of the question. There can be no doubt that it is dishonourable in a lawyer, or in any man, to betray the confidence which has been reposed in him. But, by the supposition, there is here no confidence in the case. Both parties are, from the first, fully aware that the lawyer is always liable to be called upon to disclose the communications of his client. Where there is no confidence there can be no treachery or dishonour.

At the same time, however, that we admit the fallacy of this objection, we cannot concur in Mr. Bentham's view of the subject, and we believe that his argument will not be found to embrace all the cases which may arise. It is easy to conceive many reasons which may render even an innocent man justly unwilling to have all the circumstances of his case publicly disclosed. Suppose, for instance, that, although he is wholly innocent of the crime laid to his charge, there are circumstances connected with the transaction which, if disclosed, will render him liable to incur public odium or the displeasure of his friends or relations. Or, suppose that a publication of the facts is likely to be prejudicial to an intimate friend, or injurious to the reputation of a female. In any of these

cases, if the practice prevailed of compelling a lawyer to disclose the private communications of his client, the prisoner would, in all probability, make a false or partial statement of the facts to his professional adviser, under the false hope of escaping conviction for the offence, and, at the same time, of avoiding the evil consequences of publishing the circumstances of the case. And in some instances, without doubt, the effect of this want of confidence would be, to render the defence of the prisoner imperfect, and thus to lead to an unjust conviction. If, on the other hand, the accused had been able to place full reliance in the secrecy of his adviser, both his objects would, in all probability, have been effected; or, if that were impossible, he would, at any rate, have been convinced of the necessity of allowing such a disclosure of the facts as might secure his acquittal. A similar evil result might be produced by this want of confidence, in all cases where a prisoner was guilty, not of the crime laid to his charge, but of some minor offence; where, for instance, he was indicted for murder or burglary, but was really guilty only of manslaughter or larceny; as, in the hope of escaping punishment altogether, he might probably conceal the real facts from his lawyer, and might thus be unjustly convicted of the more serious offence.

Whilst, for these reasons, we differ from the opinion of Mr. Bentham, that no danger would be incurred by the innocent in consequence of the destruction of professional confidence; we also doubt whether such an alteration of the law would materially increase the difficulty of fabricating a defence for the guilty. It would always be in the power of the prisoner or his friends secretly to consult with a legal adviser, and to employ him in drawing up instructions for the defence; which instructions the prisoner might himself afterwards put into the hands of his attorney or counsel, without giving him any farther information on the subject. And this mode of evading the rule is much more likely to be understood and practised by the hardened offender than by the innocent or inexperienced.

Another question on which Mr. Bentham and other writers are at issue, is, the propriety of requiring the husband and wife to give evidence against each other. Mr. Bentham has, we think, satisfactorily shown, that danger of deception has, in this case, been improperly alleged as a ground of exclusion; and that the same arguments in favour of admissibility are applicable, in this instance, as in those of other interested witnesses. Some of his opponents, however, defend the exclusive rule, not as conducing to the ends of justice in the particular case, but on grounds of general utility. They remind Mr. Bentham, that he himself admits the impropriety of requiring Catholic priests to give evidence of facts which they may have learnt through the medium of confession; and that he

has stated, as one of his reasons for this opinion, his belief that the practice of confession is, in many cases, of public utility, and that it could not exist if not protected from disclosure. They contend that a similar argument is applicable to the case of married persons; because it is undeniably important that, in the marriage state, the most perfect confidence should exist between the parties; and, they say, this can scarcely be expected, if either is liable to be called upon for a disclosure of confidential communications. This argument, though certainly not without weight, seems scarcely sufficient to establish the propriety of the exception to the general rule of admissibility; because the cases in which married persons would be called upon for such disclosures would, in all probability, be too few to have any assignable effect upon the happiness of married life; whilst, on the other hand, cases may not unfrequently occur in which valuable and unexceptionable evidence may be rejected by maintaining the exclusive rule. The question, however, is undoubtedly not without difficulty.

Great confusion has arisen, in treating of subjects of jurisprudence, in consequence of not distinguishing the question of the utility of any particular law, considered in itself, from that of its bearing upon the other laws which may happen to exist under an imperfect or technical system. To take an example from the case which we have been just considering, that of husband and wife:—Suppose that the laws which regulate property are so imperfect that positive injustice is likely to be committed, in case they are strictly enforced, by obtaining the best evidence respecting the private affairs of individuals: this may be considered a strong additional objection against requiring the testimony of any witness who is almost necessarily admitted to the confidence of the party, as is usually the case between married persons. Or, to give a more striking instance:—According to the law of England, no charge of high treason can be established without the evidence of at least two witnesses. Now we have already seen that, so far as regards the immediate object of inquiry, nothing can be more absurd than any limitation to the number of the witnesses. Yet, at the same time, we will not pretend to say that this very rule may not have been of service in protecting the lives of the innocent, and in checking the encroachments of arbitrary power; because, in former periods of our history, the law of treason was so ill-defined, and was often administered by judges and juries so servilely disposed, that any rule which favoured the escape of the accused could not but be regarded as a public benefit. It is obvious that, in these, and all similar instances, one bad law becomes useful, only because it tends to prevent the execution of another. But it would be ridiculous on this account to ascribe to it any positive merit. It would be a palpable absurdity to contend, generally, that the

execution of the law is a public evil, and that, therefore, it ought to be the object of rules of evidence to prevent the discovery of the truth. On the contrary, it must be assumed that, in all cases, the object of the legislator is the execution of the law, and that every rule of evidence is advantageous exactly in proportion as it tends to effect this object; and if any law is so bad that its execution is found to be an evil, this is a reason for altering the law, not for maintaining a bad rule of evidence. At the same time it must be admitted, that if, for any reason, it is impracticable at once to alter the law, this affords a good reason for delaying the amendment of the rule. But it should always be recollected, that a bad rule of evidence is only useful so far as it affords an opportunity of evading a bad law; that its effect is, in fact, precisely the same as if a prisoner were allowed a certain chance of escape, either by lot, or in any other mode perfectly without reference to the merits of the case.

We are the more anxious to insist upon the necessity of making this distinction, because substantial improvements in our law are too often resisted by arguments similar to those to which we have just adverted. Suppose, for example, it is proposed to repeal some rule of law which gives the accused a chance of escape, on grounds entirely independent of the merits of the case, such as that which renders a clerical error in an indictment fatal to the proceedings: an argument is sometimes raised against such an amendment, founded on particular cases of oppression recorded in our history, where it is presumed the rule in question was, or might have been, beneficial. To such an argument it may always be replied, either that the law no longer permits such instances of oppression, or, if that be not the case, that more direct and effectual means ought to be taken to prevent their recurrence. To a similar error is to be ascribed the frequent application of the term *merciful* to laws, with reference, not to the apportionment of the punishment, but to the facilities which they afford for the escape of the accused. To style a law merciful, because it affords to all prisoners indiscriminately a certain chance of escape, is an abuse of language. There is as little mercy to the public in allowing the guilty to escape, as there is to the accused in punishing him when innocent. According to this application of the term, that system of law is most merciful, under which the innocent man has least chance of redress for injuries, and which affords the smallest protection to our persons and property.

There is one remaining class of exclusions, which is too important to be passed over without notice. We refer to all those cases in which any evidence is excluded, in consequence of rules of law which render some particular evidence conclusive. If the law directs that evidence of a particular kind shall be considered con-

clusive, this is in effect to exclude all additional testimony on the subject. After what has been already said, it is scarcely necessary to add, that the tendency of all such rules is injurious to the ends of justice. It is impossible for the legislature to point out beforehand, by any general rules, what testimony is worthy of belief. For as we have seen that no class of witnesses is so wholly unworthy of credit, that their testimony may not, under some circumstances, be serviceable in the discovery of the truth; so, on the other hand, it may be safely affirmed, that no particular species of evidence, which can be specified beforehand by any general rule, is so excellent as to deserve implicit confidence. Suppose that a great number of witnesses of respectable character, and apparently disinterested, are perfectly clear and consistent in their testimony. Even in this strong case it is impossible to say that the fact is established with such perfect certainty as to justify the exclusion of all additional evidence. The witnesses may be proved all to labour under some common mistake or delusion; they may be shown to have some secret and strong interest in the event of the cause; they may be contradicted by more numerous or more respectable testimony; or their evidence may be proved to be inconsistent with known and indisputable facts. At all events, if truth be the real object in view, it must be most inexpedient to compel the judge to shut his ears against a part of the evidence, when that evidence may be serviceable, and cannot possibly be injurious to the ends of justice. Yet, under the technical system established by the law of England, numerous cases of this kind will be found to exist; for a detailed account of which we must refer our readers to Mr. Bentham and his editor.

There is one case in which it may, at first sight, appear neither unreasonable nor inexpedient that evidence should be declared to be conclusive by an act of the legislature. There are some offences which it may often be difficult to bring home to the perpetrator by satisfactory evidence, although it may be comparatively easy to prove the commission of acts intended, in all probability, to facilitate their perpetration. Such is the case when it is only possible to prove against the accused the manufacture or possession of certain tools or other articles evidently calculated to aid in the violation of the law. It may be contended, that proof of these acts may, with propriety, be declared to be conclusive evidence of the commission of the offence, and that there is no hardship to the accused in such a regulation, provided he has previous notice of its existence, and provided the act so declared is wholly unnecessary, except for a guilty purpose.

It cannot be doubted that it may often be expedient to prohibit certain acts, innocent in themselves, with the view of more easily or more certainly preventing the commission of crimes. But it

remains to be shown why this object may not be effected in a more simple and reasonable manner, by at once declaring such acts to be offences in themselves, rather than by deeming them to be conclusive evidence of other offences, which may or may not have been really committed. Such is the more natural and reasonable course, and the one which has usually been adopted by the legislature. When, for instance, it was thought proper to give the Bank of England the exclusive privilege of manufacturing paper with a particular water-mark, the manufacture of such paper by other persons was not declared to be conclusive evidence of forgery, but it was very properly prohibited as a distinct offence. And not only is the other mode of proceeding less simple and reasonable in itself, but it is calculated, in some cases, to cause offences of a very different complexion to be confounded together, and thus to give rise to improper legislation. When, for instance, the Scottish Parliament of William and Mary thought proper to pass an act declaring the concealment of the birth of an illegitimate child to be conclusive evidence of infanticide—if this rule had been observed, and the bill had been differently worded, so as to express directly that the concealment of the birth should be a capital offence, it is scarcely possible to believe that the injustice and cruelty of the law would not have become sufficiently glaring to ensure its rejection.

We have now discussed, as fully as our limits will allow, the expediency of most of those rules by which evidence is excluded from our courts of law. We have seen that these rules are in general ill calculated to promote the discovery of the truth, or to serve the ends of justice; and we have endeavoured to prove that the general rule which ought, with very few exceptions, to prevail on this subject, is the universal admissibility of evidence; leaving it to the judge or jury to form a due estimate of the value of the testimony, according to the peculiar circumstances of each case. We have seen also that the English law of evidence is very far removed from this simple and intelligible principle, and that its rules are utterly inconsistent with each other, and irreconcilable with reason or justice. The impolicy of the present system can no longer be denied, as attempts have frequently been made to remedy its acknowledged evils by legislating for particular occasions, or in favour of particular classes of witnesses. But experience has proved that, though these acts of petty legislation may have alleviated the inconvenience in some instances, they have operated but as a very imperfect remedy, and have served to render the different parts of the system still more inconsistent and contradictory than they were before. In short, the necessity for these very numerous exceptions has been the best possible practical proof of the impolicy of the general rule.

It is to be hoped, therefore, that the time is approaching when the whole subject must be brought under the consideration of the legislature; and when it will be found necessary to sweep away the numerous absurd and inconsistent provisions with which this branch of our law is loaded, and to legislate anew upon some rational and uniform system. It is difficult to conceive a case in which an important measure of legal reform could be effected with greater ease and security. Little more would be necessary than to repeal a variety of useless and mischievous rules, by which evidence is excluded from our courts of justice. And it is not the least recommendation of this simple reform, that it would not only contribute essentially to facilitate the inquiry, but that it would also render the administration of the law more consistent with the ordinary notions of justice entertained by the public; and would put an end to many of those glaring and offensive cases, in which the due course of law is obstructed, and justice openly denied, in consequence of some technical rule which, to ordinary minds at least, appears to have no bearing upon the merits of the cause.

An objection is often made against proposals for the reform of the law, especially by members of the legal profession, on the ground that the different parts of the system are so connected together, that it is difficult to make any alteration in one branch of it without materially interfering with another. And on this account, it has been said, the effect of legal reforms can never be duly appreciated, except by persons of great legal learning, and their execution ought to be entrusted only to the most cautious hands. The present proposal seems scarcely liable to this objection, relating, as it does, simply to the best means of inquiring into the state of the fact. The question, therefore, is one which requires no stock of legal learning, but is in all probability more likely to be properly understood by any intelligent person, well acquainted with human nature, and accustomed in practice to form an estimate of human testimony, than by a lawyer, habituated to the technicalities of our courts. The legislature and the public will do well to consult their own reason, and form their own judgment, upon the subject, unbiassed by the *dicta* of judges, or by the authority of rules of law, which have been handed down from barbarous ages.

Let us, however, not be misunderstood, as desirous of throwing any unmerited stigma upon the members of the bar, or, above all, as disposed to undervalue the services of those eminent legal reformers who are to be found in the profession. It is one of the most encouraging signs of the present times, that lawyers are in general beginning to canvass questions of legislation with more enlarged and liberal views; and that there are to be found amongst them individuals of great legal learning and general information,

who are prepared to devote their energies to the support of the great cause of legal reform. And we cannot but think that Mr. Bentham has been a little too unsparing and indiscriminate in his censures upon the members of the profession.

We are quite willing to admit that Mr. Bentham has conferred a great benefit upon the public, in demonstrating the interest of lawyers in promoting delay and expence. We have no doubt that the defects of our law may in a great measure be ascribed to this source, and we think it of great importance that this fact should be distinctly made known to the public. Keeping this object constantly in view, and having a strong conviction of its utility, Mr. Bentham has, perhaps, in some instances, gone too far, in ascribing that to sinister interest and deliberate design, which was really to be attributed to ignorance or mistake. He seems also, in some cases, to have been not sufficiently guarded in the use of language, in attributing the conduct of judges and lawyers to *corrupt* motives, as they are commonly termed; that is to say, to motives of direct pecuniary interest. It is one thing for a judge to make a rule for the purpose of putting a sum of money into his pocket; another, if he performs the same act for the sake of promoting the interest of the class amongst whom he lives, or with the view of obtaining their good opinion, or avoiding their censure. In the one case, the motive is strictly *selfish*, in the other it is *social*, and may sometimes be opposed to the private interest of the individual; at all events, it is only necessary that its scope should be more widely extended, in order to become an effectual sanction for good conduct. There is, therefore, a manifest distinction between the two cases.

In pointing out this distinction, however, we have no wish to represent the one motive as less injurious in its consequences than the other. On the contrary, we believe that, in a highly civilized country like our own, greater danger is to be apprehended from motives to misconduct, in proportion as their evil tendency is less glaring; and there is, perhaps, no one circumstance which has contributed in a greater degree to the injury, both of our legal and our political institutions, than the tendency of particular classes of persons to frame for themselves a standard of morality distinct from that which ought to be the rule of their conduct as members of the community. Individuals, even of the least selfish characters, are too apt to sympathise with, and promote the interests of their own class, in preference to those of the public at large. A judge, who would reject a bribe with indignation, would yet perhaps enforce a rule for the benefit of the Bench or the Bar, though it might be productive of infinitely greater evil to the suitors in the shape of delay and expence, than many acts of direct corruption. And a statesman, who would scorn to prefer his own selfish in-

terests to those of the public, will yet feel no reluctance in avowing his determination to support the interests of the order to which he belongs. These instances will be sufficient to explain our meaning. We regret that Mr. Bentham should not have pointed out this distinction with greater clearness, not only for the sake of showing the real nature of the obstacle to improvement, but also lest his readers, when they hear a class of persons of acknowledged respectability and integrity charged with corrupt conduct, should be led to distrust the reasoning from which such results are obtained.

In conclusion, we must again warn our readers that we have attempted only to give an outline of a small part of Mr. Bentham's most valuable work; and we shall rejoice if our remarks shall induce them to refer to the original for more full and accurate information upon this important subject.

ART. II.—HISTORICAL ILLUSTRATIONS OF THE ENGLISH LAW.

"Now it is to be observed that oftentimes, for the better understanding of our bookes, the advised reader must take lights from our historie and chronicles."—*Co. Litt.*

NO. I.—THE JUDGES.

The relation between jurisprudence and history is almost as intimate as, in medicine, the connection between the symptoms and the remedy. Without a knowledge of the circumstances under which a law was enacted, and to which it was originally applied, it is impossible to form an opinion upon its character and utility, or duly to estimate its application to present circumstances. It is, therefore, not only an amusing and interesting, but likewise an instructive study, to trace the history of our laws to their source, to develop the motives which led to their enactment, to study their original application and effect, and to examine their operation at various periods of our history. Closely connected with the progress of our jurisprudence, is the character of those by whom the laws have been administered.

The character of the great officers of justice in this country has varied strangely with the varying habits and feelings of the times. The ermine of our modern judges is seldom soiled by the touch of the slanderer; but, in former ages, the Bench was but too frequently loaded with corruption and impurity. If we may believe the author of the "*Mirror of Justices*," who is said to have written in the reign of Edward I., there were almost as many judges as

malefactors hanged in the time of Alfred.* That active monarch ordained that all false judges, after forfeiting their possessions, "should be delivered over to false Lucifer, so low that they never return again; that their bodies should be banished, and punished at the King's pleasure; and that for a mortal false judgment they should be hanged as other murderers."† That this denunciation was not merely *brutum fulmen* appears from a list, given by the same author, of the judges executed by the King's order. In one year, we are told that forty-four justices were hanged. "He hanged Cole, because he judged Ive to death when he was a madman. He hanged Athulf, because he caused Copping to be hanged before the age of one-and-twenty years. He hanged Diling, because he caused Eldon to be hanged who killed a man by misfortune. He hanged Horne, because he hanged Simin at days forbidden." A judge at this time could scarcely escape with life or limb; for, not content with hanging for hanging, Alfred maimed his judges for not maiming their prisoners. Thus we are told he cut off the hand of Haulf because he saved Armock's hand, who was attainted before him, for that he had feloniously wounded Richbold; and he judged Edulfe to be wounded, because the latter judged not Arnold to be wounded, who feloniously had wounded Aldens.‡

In a rude and uncultivated age, when public opinion exercises little or no influence, when the will of the monarch is strong, and the voice of the people weak, the ministers of justice are selected with little regard to the public welfare. Favour, caprice, or convenience, dictates the choice; and the man who is appointed to guard the interests of justice, is too often the first to betray them. In the reign of the Plantagenets some gross instances of malversation in the judges occurred. Sir Henry de Bath, a judge in the reign of Henry III., is said to have procured a great estate by bribery and corruption, having acquired so much as 200*l.* in one circuit. At length, being accused by Sir Philip D'Arcy of injustice in his office, and treason, the King was so incensed, that he issued a proclamation, that any person having any complaint against the delinquent might come in and he should be heard; upon which, another of the judges accused Bath of acquitting a malefactor for a bribe. Sir Henry's friends, however, armed themselves in his defence, and protected him from punishment. The King now, says Daniel,§

* This portion of the *Mirror* has brought the authority of the whole work into merited discredit. Yet Sir E. Coke had credulity enough for it all. "See the 'Mirror of the Law,' in the time of King Alfred, how many justices were, in one year, hanged as homicides for their false judgments; but that law has been long since delect and antiquated, and yet may serve for a memorial of the time past." 3 Inst. 224.

† *Mirror*, c. 4, s. 18.

‡ *Mirror*, c. 6.

§ Daniel ap. Kennet, vol. i. p. 180.

“broke out into a rage, and said that whosoever should kill Henry de Bath should be acquitted for that deed; but this heat was soon after allayed by the mediation of the Earl of Cornwall and Bishop of London, who, urging the danger of the time and the discontents of the kingdom, Sir Henry, upon the payment of two thousand marks, was restored to his former place and favour.”

In the following reign, the Bench appears to have been extremely corrupt. On the return of Edward I. from France, in the year 1289, in consequence of the general complaints with regard to the administration of justice, the judges were summoned before parliament, and examined, when the whole of that learned body, except two (who, says Sir E. Coke, to their eternal memory and honour, were found upright), were fined in large sums for the extortions of which they had been guilty.* Sir Thomas Wayland, the Chief Justice of the Common Pleas, being found to be the chief delinquent, was banished for ever from the kingdom, and the whole of his lands and goods were confiscated to the king.† In the reign of Edward III., several of the justices were fined for taking 4*l.*, by way of bribe, from a person who was indicted before them;‡ and, in the 18th year of that king's reign, a long form of oath§ was imposed upon the judges, with the view of checking the corrupt practices of which they had been guilty. The oath ran, “that ye take not, by yourself or by other, privily or openly, gift or reward of gold or silver, or of any other thing which may turn to your profit, unless it may be meat or drink, and that of small value, of any man that may have any plea or process hanging before you, as long as the same process shall be so hanging, nor afterwards, for the same cause. And that ye take no fee as long as ye shall be justice; nor robes of any man, great or small, but of the king himself.” With that regard to the interests of the prerogative which has been generally displayed in the appointment of judges, the oath proceeds—“and that ye shall do and procure the profit of the king and of his crown, with all things that ye may reasonably do the same.” Five years after the institution of this oath, Sir William Thorpe, the Chief Justice of the King's Bench, was tried before a special commission for having received bribes on the circuit, and, having pleaded guilty, was sentenced to be hanged (a strange judgment of *suspendatur*, says Sir E. Coke||), but was subsequently pardoned. The statute 18 Edw. III. was repealed by the 9 Rich. II. c. 2, “because it was very hard,” and was not revived again till the 11 Henry IV. The latter act

* The amount of the fines is given in Speed. The largest was 7000 marks.

† Daniel ap. Kennet, vol. i. p. 195. Parl. Hist. vol. i. p. 92. Wayland, according to Sir E. Coke, was attainted of felony, being accessory to murder. 3 Inst. 146.

‡ 3 Inst.

§ 18 Ed. III. stat. 4.

|| 3 Inst. 223.

"hath limited," says Coke, "the punishment (amongst others) of corrupt judges, of whom now we entreat, so as the former example of Sir William Thorpe is not now to be followed, which we affirm not in favour of sordid bribery (which we hate, as in the proper chapter thereof appeareth), but in advancement of justice and right, which is the end of our labours in this and other of our works."*

Hitherto, the delinquencies into which the judges had occasionally fallen, seem to have been unconnected with political causes; but during the contests which took place in the reign of Richard II. between the king and his parliament, the judgment seat was contaminated by political corruption. In a country like England, where, from a very early period, the laws have been the object of popular regard and veneration, the opinion of those who administer them must necessarily carry with it very considerable weight, and, in every dispute between the crown and the people, to secure that favourable opinion was long the policy of the court. The triple armour with which Justice endues her votaries, was, in vulgar apprehension, bestowed by the hands of those who officiated at her altar. When, in consequence of the misgovernment of Richard II., a commission was issued for the purpose of inquiring into and reforming the state of the royal household, and the administration of the government, the King, indignant at this infringement of his authority, summoned a council of his adherents at Nottingham, where it was resolved that the opinion of the judges should be taken as to the illegality of the commission of reform. A favourable, but, certainly, in many points, a most unconstitutional answer was obtained, and all who had assisted in procuring the commission were declared to be traitors. In the following years, however, these *legicides* (as they are termed by the strenuous Mr. Petyt),† were impeached in parliament for the illegal advice which they had tendered to the King.

The defence which the greater number of the judges made was, that their opinions were given under the immediate influence of menaces. The statement of Sir Robert Belknap, if it may be believed, presents a curious picture of the open violence with which the integrity of the judges was assailed. "Sir Robert Belknap alleged that after the feast of Epiphany, next after the last parliament, he came to Windsor by the king's commandment, and there the Archbishop of York charged him to have been the contriver of the said commission and statute, in derogation of the King's regality; and that there was no man whom the king hated more than himself; and that if he could not invent some way to

* 3 Inst. 225.

† Jus. Parl. p. 186.

defeat and annul the same, and restore the king to his royalty, he should be killed like a false traitor as he was. To which he answered, that the intention of the lords, and of all the rest who assisted in the making of the said commission and statute, was, that it should be for the good and the honour and the good government of the state, of the king, and all his kingdom. And he then departed from Windsor in great uneasiness, and in great fear of his life." Belknap then described further menaces on the part of the Archbishop of York, the Duke of Ireland, and the Earl of Suffolk, and averred that the opinion he had given was in consequence of those threats.*

Amongst the king's chief advisers in these transactions, was Sir Robert Tresilian, Chief Justice of the King's Bench, who at the time of his impeachment was not in custody, but being despatched by the King privately to gather information, was taken at Westminster, in the disguise of a farmer, and executed on Tower-hill. A very circumstantial and curious account of his apprehension is given by Froissart.† The other delinquent judges were condemned to death, but on the intercession of several of the nobles they were banished to Ireland.

Mr. Hume has endeavoured to defend the opinion of the judges in this matter, but with little success. The offenders themselves admitted that they had yielded to the influence of threats, and although the violence of the parliament in condemning them to capital punishment may be justly blamed, yet it cannot be doubted that men who had thus prostituted their consciences to their fears, were well deserving of severe animadversion. The example certainly was not lost upon succeeding judges.‡

The princes of the house of Tudor do not appear to have been in the practice of exercising an improper influence over the judges, though the bench was in general very ready to forward the designs of the court. In the reign of Henry VI. the judges distinguished themselves by their opposition to the practice of giving extra-judicial opinions, a practice which continued for many years to be the opprobrium of the bench. The Duke of

* Rolls of Parl. vol. iii. p. 239; Petyt, Jus. Parl. 136; How. St. Tr. vol. i. p. 90. Knyghton says that when Belknap was thus compelled to concur in this opinion, he exclaimed, "Now want I nothing but a ship, or a nimble horse, or a halter, to bring me to that death I deserve. If I had not done this I should have been killed by your hands; and now I have gratified the king's pleasure, and yours, in doing it, I have well deserved to die for treason against the nobles of the land." Col. 2694. See also Holl. v. iii. p. 456.

† Chron. p. ii. fo. 110; St. Tr. vol. i. p. 114.

‡ Lord Chancellor Ellesmere, in his speech in the case of the Postnati (How. St. Tr. vol. ii. p. 665), seems to have been of Mr. Hume's opinion; see Petyt's remarks on this, Jus. Parl. 199; Mr. Justice Foster thought very differently, see Discourse iv. p. 396.

York having preferred his claim to the crown, the lords summoned the judges to take their advice and counsel, requiring them in the king's name to advise therein, and to search and find arguments for the king against this claim. The judges replied, that they were the king's judges, to *determine matters that were actually before them in law between party and party*, and in such matters between party and party *they could not be of counsel*, and that this matter was between the King and the Duke of York *as parties*. Also that it had not been accustomed to call the king's justices to counsel in such matters; and especially such a matter which was so high in its nature, and touched the king's estate and royal crown, which was above the ordinary common law, and passed their learning, wherefore they durst not enter into any communication about it, and desired to be excused.*

It would appear by the expressions made use of by the judges in this instance, that they considered it improper to afford their counsel to the king in any case in which he was a party, and thereby to constitute themselves advocates instead of judges. It is upon this ground that it is said, that "the judges ought not to deliver their opinions beforehand in any criminal case that may come before them judicially, especially in cases of high treason, for how can they be indifferent who have delivered their opinions beforehand?"†

To the same effect is Humphrey Stafford's case, cited by Lord Coke, from the Year-book of 1 Henry VII. 25. Stafford was attainted of high treason by act of parliament, and having afterwards taken up arms against Henry VII., was defeated, and fled to a sanctuary near Abingdon. On his being taken from this sanctuary, the abbot of Abingdon applied to the judges, presenting to them letters patent, subjecting all the inhabitants within such a district to himself, and none else. The judges met, and debated the matter, whether sanctuary was to be allowed, and some of the judges observed, "how can we argue this matter, when it is to come before us speedily? It is not good order to argue this matter, and give our opinions, before it comes before us judicially." Hody, the attorney-general, said, that if the king knew that the sanctuary would save the offender, it should not come before them, and therefore the king would know their opinions beforehand; but Fairfax and others said, "it was hard to give their opinions beforehand." Notwithstanding this, a day was assigned to hear the abbot and his counsel, but before the judges met, Chief Justice Hussey came to town, and "went to the king, and requested the favour that he would not desire to know

* Rot. Parl. 39 Hen. vi. 12.

† Fortescue's Rep. 389.

their opinions, for he supposed it would come into the King's Bench judicially, and then they would do that which was right; and the king accepted of it; and the prisoner was brought up to the King's Bench, and insisted on the sanctuary and letters patent, and all the judges afterwards met to consider the matter."

Fortescue, who wrote in the reign of Henry VI., in his chapter on the judges, has given them a much better character than they deserved. The passage, too, is curious, as showing the quantity of time devoted at that period to the administration of justice at Westminster. "You are to know farther, that the judges of England do not sit in the King's courts above three hours in the day; that is, from eight in the morning till eleven. The courts are not open in the afternoon. The suitors of the court betake themselves to the Pervise,* and other places, to advise with the serjeants-at-law and other their counsel about their affairs. The judges, when they have taken their refreshments, spend the rest of the day in the study of the laws, reading of the Holy Scriptures, and other innocent amusements at their pleasure. It seems rather a life of contemplation than of much action. Their time is spent in this manner, free from care and worldly avocations. *Nor was it ever found that any of them had been corrupted with gifts or bribes.*"†

That bribery was not uncommon in our courts of justice during the reign of Henry VIII., may be gathered from the accusations against Sir Thomas More. Having made a decree against one Parnell, the latter complained to the king that the chancellor had, by the hands of his wife, taken from him "a great gilt cup" as a bribe. Sir Thomas being summoned before the council to answer this accusation, "where the matter," says his biographer, Roper, "was most heinously laid to his charge, he forthwith confessed that forasmuch as that cup was long after the foresaid decree, he, upon his importunate pressing upon him thereof, of courtesy refused not to receive it." Lord Wiltshire, who disliked More, and who does not appear to have been aware of his jocular vein, immediately exclaimed, "Lo, my lords! Did I not tell you, my lords, that you would find this matter true?" Sir Thomas now desired their lordships, "that as they had heard him courteously tell the one part of his tale, so that they would vouchsafe of their honors indifferently to hear the other." After which obtained, he further declared to them, "that albeit he had, indeed, with much work, received that cup, yet immediately thereupon

* St. Paul's Cathedral.

† "This," says the annotator of Fortescue, "is not to be understood in strictness of speech; our author *well knew* the cases of the four-and-forty judges, hanged in one year in England, as murderers, for their corrupt judgments."

caused he his butler to fill it with wine, and of that cup drank to her: and that when he had so done, and she pledged him, then, as freely as her husband had given it to him, even so freely gave he the same to her to give unto her husband for her new year's gift, which, at his instant request, though much against her will, at length she was fain to receive, as herself and certain others then present before them deposed." "Thus," adds Roper, "was the great mountain turned scant to a little molehill."

Under the government of the Tudors the services of the judges, as political agents, were seldom required. The hand of government was sufficiently strong for the accomplishment of its own objects, without the assistance of the arm of justice. The importance of having a subservient bench was not fully felt until the time of the Stuarts, when the increasing intelligence of the people, and their consequently increasing power, rendered it necessary for the court to avail itself of every means of influencing public opinion. This circumstance has been remarked by Clarendon. "It is very observable," says he, "that in times when the prerogative went highest, never any court of law, very seldom any judge or lawyer of reputation, was called upon to assist in any act of power." During the reign of Elizabeth, the judges, so far from being resorted to by the government, in order to enforce its arbitrary courses, in some instances very boldly and worthily opposed themselves to the court. A person of the name of Cavendish, having suggested to the queen that she had power to appoint a new officer in the Court of Common Pleas, obtained a patent, with a direction to the judges to admit him. The duties of the new office being performed by the prothonotaries and the filacers, the judges did not obey the queen's commands, which were presently repeated in a more peremptory style, and the judges were required forthwith to displace those who stood in Cavendish's way. The answer well became the ministers of public justice,—that the queen had taken an oath to protect the laws and the judges; and that if they obeyed her commands, they must necessarily act contrary to the laws, and to the oath which they had themselves vowed to God, to her majesty, and to the land in which they were born and lived. That if the fear of God were not sufficient, yet the examples of others, and the punishment of those who had offended against the laws, were a sufficient warning to them.—This representation had the desired effect, and the judges were not further troubled with the claim of Mr. Cavendish.*

Another opportunity was presented to the judges, during the same reign, of vindicating their characters as the conservators of public

* See Anderson's Rep. p. 152, and 3 Howell's State Trials, 1281.

justice. An abuse which, during the earlier periods of our history, was never unfrequent,—the arbitrary imprisonment of obnoxious individuals by the Privy Council, became so grievous under the dominion of Elizabeth, that the judges were induced to present a remonstrance on the subject; which, although in many respects it failed in defining the full limits of the liberty of the subject, is of extraordinary merit, when considered with reference to the times in which it was penned: “We, her majesty’s justices of both benches, and barons of the exchequer, do desire your lordships that, by your good means, such order may be taken that her highness’s subjects may not be committed or detained in prison, by commandment of any nobleman or counsellor, against the laws of this realm, to the grievous charges and oppression of her majesty’s said subjects: or else help us to have access to her majesty, to be suitors unto her highness for the same; for divers have been imprisoned for suing ordinary actions and suits at the common law, until they will leave the same, or against their wills put their matter to order, although some time it be after judgment and accusation.”*

(To be continued.)

ART. III.—CHANGES IN FRENCH LAW.

Some Account of the Changes which have taken place in France, in the Electoral Laws, the Municipal Institutions, the Organization of the National Guard, and, generally, in the Legislative, Administrative, and Judicial Branches of the Government, since the Revolution of July, 1830.

The changes in legislation, and in the principles and organization of the government and courts of justice, which have taken place in France, in consequence of the revolution of 1830, have not been so important and so radical as might have been expected.

The modifications introduced into the charter of 1814 are well known. It is indeed true that the 70th article of the amended charter says, “all laws and ordinances, in so far as they are contrary to the principles adopted in the reform of the charter, are, from henceforth, and shall remain, abrogated and annulled.” And the Article 59, (formerly Art. 68,) adds, “The civil code, and the laws now existing, which are not contrary to the present charter, shall (alone) remain in force, until they have been legally repealed.” These two enactments have, however, been so extended in practice, that all laws, decrees, ordinances, and other acts of the re-

* Hallam’s Const. Hist. vol. i. p. 318. Anderson’s Rep. 297

public, of the empire, and of the restoration, are considered as remaining in force until formally repealed by succeeding legislatures. Such being the interpretation and the practice adopted by the government and the courts of law, the principles laid down by several articles of the new charter must be considered, at present, as entirely a dead letter, with the exception of those which have been subsequently recognized and adopted in some new law. The French are, therefore, in a general sense, living under the regime preceding the revolution of 1830. The object of this observation is not to criticise the adoption, and certainly too rigorous application, of this principle, but it is merely made in order to serve as an introduction to the following account of the principal Acts which have been passed since the revolution of July.

The 69th Article of the amended charter contains the promise of nine laws or important measures. It runs thus, "Separate laws shall be successively enacted, and with the least possible delay, for the following objects:—

1st. Trial by jury in case of offences of the press and political offences.

2d. The responsibility of ministers and other agents of government.

3d. The re-election of deputies appointed to public offices of profit.

4th. The annual vote of the army.

5th. The organization of the national guard, with a voice in the choice of their officers.

6th. Regulations for securing by law the rights of officers of every rank, both in the army and navy.

7th. Departmental and municipal institutions founded on an elective system.

8th. Public instruction and liberty of teaching.

9th. The abolition of the double vote, and the fixing of the qualification of the electors and the eligible."

Of these promises, six have been fulfilled, or are on the eve of fulfilment, as we shall proceed to show. These are, the appointment of a jury for the trial of political offences and offences of the press; the re-election of deputies who have taken office; the annual vote of the army; the organization of the national guard; the departmental and municipal institutions (Paris excepted); the abolition of the double vote, and the fixing the qualification of the electors and of the eligible.

Of these, the last measure, and the regulations which relate to the re-election of deputies, are the most important, because they influence the formation of the legislative body. These alone constitute a real reform, and if they have caused less sensation in France than *Reform* has done in England, it arises from their hav-

ing been so long considered as a debt, a sort of restitution due to the country. The origin and nature of the double vote introduced into the electoral system by the law of the 29th of June, 1820, are well known. This law was passed in order to procure a ministerial majority opposed to the people, who would naturally have had a majority against government, if the chamber had been annually renewed by fifths, conformably to the 37th Art. of the charter, and the law of the 5th of Feb. 1817. By the law of 1820, one-fourth of the whole number of electors, who pay the highest amount of taxation, after having voted in the colleges of the *arrondissements*, have the right to meet in the college of the department for the purpose of nominating amongst themselves 172 new deputies. By means of this aristocratic privilege, the manifestation of the wishes and opinion of the country was prevented. This was the origin of M. de Villèle's three hundred. But this result was only temporary; the force of constitutional opinion soon triumphed over every obstacle, and the abolition of the law of 1820 would certainly have been one of the first measures of the session of 1830, a measure destined to consolidate the victory of the national party. This was one of the objects which Charles X. endeavoured to prevent by his *coup d'état*; and it may easily be imagined that, after the revolution of July, the promise of abolishing the double vote was not regarded by the people as any very great concession.

The laws relating to elections and to electoral qualifications still remained to be settled. This was the principal object of the law of the 19th of April, 1831. The Chamber of Deputies of 1830, in its revision of the constitutional charter, had only determined the age necessary for being an elector or a deputy. The age of electors was reduced from 30 to 29, and that of deputies from 40 to 30; but the other regulations remained to be fixed by law. Public opinion demanded the reduction of the electoral qualification to a hundred and fifty or two hundred francs, and the absence of any qualification for the candidate. With respect to this last regulation, it was alleged that it is only a restraint imposed on the electors, and an unnecessary one, since a sufficient guarantee is otherwise exacted.

The feeling of the public was likewise in favour of the admission into the electoral colleges of all persons liable to serve on juries, and entered, by virtue of the law of the 2d of May, 1827, in the second part of the jury lists.

The amplification and extension of this list of persons were also demanded, so as to include persons whose *intellectual capacity* could not be doubted—such as retired officers of the army or navy, beginning at least from the rank of captain; doctors and licentiates of one or more of the faculties of law, of science, or of letters (which includes all advocates and attornies, and the greater number of

the judges), doctors of medicine, members and corresponding members of the Institute; members of other learned societies recognised by the government; and notaries after three years' exercise of their profession. It was wished also to augment this list with the elected members of the general councils of the department, &c.; but the chamber rejected all these additions, excepting that of retired officers receiving a pension of at least 1200 francs, and of members and corresponding members of the Institute, who were admitted under the singular condition that they should pay at least 100 francs in direct taxes. The qualification for all other electors was fixed at 200 francs (direct taxes); but the chamber has fixed the rate of eligibility at 500 francs (instead of 1000), which evidently leaves too little scope for the choice of the electors, as may be perceived by the composition of the chamber.

We have but few other ameliorations in detail to point out. Thus, in future, the rent paid by the grantees of mines, and the annual licence fee paid by schoolmasters, will be reckoned as direct taxes; and there will likewise be included in the amount of such direct taxes, not only the direct taxes voted by the chambers, but also the additional taxes, voted according to law, for the municipal and departmental expences by the several councils.

The law of the 29th of June, 1820, enacted, that property, in order to qualify an elector or a deputy, should have been possessed at least a year before the convening of the electoral college. The law of 1831 merely requires that the property shall have been possessed before the annual revision of the electoral lists has commenced. This may be considered a slight improvement in the system of forming the electoral lists. Persons coming to the possession of the property by descent, or on the death of a tenant for life, continue exempt from the regulation with regard to possession for a year.

But one of the principal and happiest innovations of the new electoral law is that by which a third of the taxes paid by the landlord gives a qualification to his tenant, without affecting the landlord himself, provided the lease be regularly executed, that the term be for nine years at least, and that the tenant himself farms the land.

In those cases where, after all these regulations, the number of electors in an electoral *arrondissement* does not amount to *one hundred and fifty*, the law requires that this number shall be made up by conferring the franchise on such citizens as are the most highly taxed under 200 francs. And if it shall happen that there are several citizens paying an equal amount of taxes, the oldest shall be entered on the list of electors, to complete the number of one hundred and fifty; which number, in such case, must not be exceeded.

With regard to those who are eligible, the charter of 1830, like that of 1814, requires that there shall be at least *fifty* in each *department*, and that half the deputies of a department shall be chosen from those who are eligible, and who have their political domicile in the department. But there are, as we shall see, several electoral colleges in each department; and consequently, in fact, there may be fewer than fifty persons so eligible in each electoral college.

The number of deputies, which was, by the law of 1820, four hundred and thirty, has been increased, notwithstanding the suppression of the one hundred and seventy-two elected by the double vote, to four hundred and fifty-nine. But these deputies are not now, as by the law of 1817, elected by the electors assembled in the college of the department. Each of them is nominated by a special *arrondissement*, the extent of which is consequently very circumscribed. Many have blamed this extreme parcelling out of the country, and the system has been supposed likely to fill the chamber with mere provincial mediocrity.

The law of the 12th of September, 1830, has restored to the chances of re-election, any deputy appointed, since his election as deputy, to any public office of profit. The only exceptions to this regulation are, officers of the army or navy who shall have been promoted by *right of seniority*. And the law of the 19th of April, 1831, has proclaimed the absolute ineligibility of prefects, sub-prefects, receivers general and particular of finance, (that is to say, receivers for the departments and *arrondissements*), and paymasters in the departments. If these functionaries should quit office, either in consequence of being dismissed, or otherwise, they cannot be elected for the department or *arrondissement* in which they exercised their functions, till an interval of six months has elapsed, dating from the day on which their duties ceased. General officers having, in the interior, the military command of a portion of territory, called a division or subdivision, the *procureurs generaux* of the royal courts, the *procureurs du roi*, comptrollers of taxes, direct or indirect, commissioners of crown lands, of registration, and collectors of customs in the departments, cannot be elected deputies by the electoral college of any *arrondissement* comprised wholly or in part within the limits of their jurisdiction.

Such are the changes and principal regulations in the present composition of the legislative power in France. The law for the remodelling of the Chamber of Peers, which is at this time under consideration, will complete, on this head, the work of the revolution of July.

Next in importance to the laws which have effected this change in the composition and organization of the electoral body,

and of the chambers, are doubtless those having for their object the departmental and municipal institutions. The law of *municipal organization* is, up to this time, the only one which has been brought forward. The present session will be occupied with the law of departmental organization, and with those regulating the municipal and departmental elective bodies. The municipal law, dated the 21st of March, 1831, leaves to the king, in *communes* containing three thousand inhabitants or upwards, and in the chief places of sub-prefecture, and to the prefects in all other *communes*, the nomination of the mayors and bailiffs, (*adjoints*); but it obliges them to choose their officers from amongst the common councilmen (*conseillers municipaux*), who shall in future be chosen by the electors of the *commune*.

The common council, and the mayors, and bailiffs, were previously nominated by the king, in all towns of 5000 inhabitants and upwards, and by the prefects in all the other *communes*.

The electors of the *communes* are, first, those citizens of the age of twenty-one years, who are rated highest on the list of direct taxes, in the proportion of one-tenth of the whole population of the *commune*. The third part of the direct taxes paid by the landlord, in respect of his real property, in this case also, as in the case of the election of deputies, confers a vote upon the tenant, without affecting the qualification of the landlord. There are then added, for every hundred inhabitants above a thousand, *five* electors (still the *highest taxed*), in those *communes* which have not more than five thousand inhabitants; *four* electors in towns or *communes* containing from five to fifteen thousand inhabitants; and, lastly, *three* electors (still for every hundred inhabitants above a thousand), in towns with more than fifteen thousand inhabitants. Such is the structure of the electoral assembly of a *commune*; and those citizens who may be summoned to it by a different title, as we shall presently see, vote there always in preference by their rate of taxation. They thus occupy the place which otherwise would naturally devolve on those below them.

But, independently of those who vote in respect of the payment of taxes, the law also opens the doors of the electoral assemblies to certain classes of persons whose capacity may be sufficiently presumed from their situation in life. This is the system which was rejected when proposed as part of the electoral law of the Chamber of Deputies, but afterwards admitted in the elections for municipal councillors. This system, which formed a part of the electoral law, as brought forward by the minister in 1830, and which was adopted by the commission appointed for the preparatory examination of the projected law, and only rejected by the definitive vote of the chamber, formed also, up to a certain point, a feature of the *lan* (not yet discussed), brought forward on the 15th of Septem-

ber, in this year, for the organization of the departments. That plan proposes to summon to the election of members of the departmental councils, the persons whose names are inserted in the second part of the jury lists, that is to say, *jurors*, who, from not being rated, are not qualified to vote in the election of deputies. Whatever may be the fate of this project, the circle drawn by the municipal law, is, at least, a little wider. It admits, as we have just explained, into the number of municipal electors, certain citizens, independently of the amount of taxation, whether in the commune or elsewhere.

The persons thus admitted, are:—

1st. Citizens entitled to vote at elections for members of the chamber, deputies, and those (whoever they may be) who shall be entitled to take part in the election of members of the general councils of the department, provided that they have any connexion with the *commune*.

2d. Members of the courts and tribunals, justices of the peace or their deputies (*suppléans*), either domiciled, or possessing property in the *commune*.

3d. Members of the chambers of commerce, of the chambers of manufactures, and of the *conseils de prud'hommes*.

4th. Members of the committees of management of colleges, hospitals, and charitable institutions.

5th. Officers of the national guard.

6th. Members and corresponding members of the Institute (even though they should not pay the amount of a hundred francs in direct taxes), and members of learned societies, instituted or recognized by law.

7th. Doctors of one or more of the faculties of law, medicine, science, or letters, employed in teaching any branch of learning belonging to those faculties; advocates entered on the list; attorneys belonging to the courts and tribunals; and notaries; that is, doctors after three years' residence, and licentiates and others after five years' practice and real residence in the *commune*.

8th. The pupils of the polytechnic school (who on leaving it have been either admitted, or declared admissible to public offices), after two years' real domicile in the *commune*.

To be in garrison is not accounted residence.

9th. All officers of the army or navy receiving any retiring pension.

10th. Superannuated functionaries of government or justice receiving a retiring pension, and officers in the civil or military service enjoying a retiring pension of not less than six hundred francs.

Whatever the number of electors may be, that of the persons having their domicile in the *commune* must never be below thirty, unless there should not be a sufficient number of citizens paying

some personal tax, the most general of all the direct taxes. Thus every citizen so taxed is summoned in those places, where, joined to the other resident electors, the number shall still not exceed thirty.

The number of members of the municipal council varies, as we shall proceed to show, according to the population of the *communes*. But it must not be imagined that the electors of each *commune* unite together, either really or virtually, in one single electoral assembly, for the purpose of nominating the members of the municipal council of the *commune*. Here again the parcelling-out system prevails. *Communes* with fewer than 2500 souls having to nominate from ten to fifteen municipal counsellors, may, on the proposition of the general council of the department (which is still non-elective), and the municipal council being heard, be divided into sections, the number and limits of which are arbitrarily fixed by the prefect, who likewise settles the number of municipal counsellors to be nominated by each of them. It is clear then, that a majority of one vote in one of these sections, how small soever it may be, suffices, in order to make a member of the municipal council. In towns or *communes* of 2500 inhabitants and upwards, the law does not determine the maximum of the number, any more than the limits or boundary of the sections. This number must be such as that every section may have to nominate, in *communes* containing from 2500 to 10,000 souls, *eight* municipal counsellors at most, which supposes at least *three sections*, since the council of these *communes* must be composed of from 21 to 23 members. This subdivision may be carried much further still; for in strictness each section need only nominate one municipal counsellor, that is to say, as many sections may be made as there are municipal counsellors to be nominated.

In towns containing from 10,000 to 30,000 inhabitants, towns whose municipal council consists of 27 members, each section may only nominate at most six counsellors, which supposes five sections (twenty-seven at most). Finally, in towns of above 30,000 inhabitants, of which the municipal council must consist of at least 36 members, each section may only elect four counsellors, which supposes at least nine sections (36 to 40 at most), and yet a majority in one of these sections is sufficient to make a member of the municipal council.

The division into sections is regulated by the neighbourhood, in such a manner as to divide the number of voters as equally as possible among the sections. But the fixing of the number and limits of these sections is, as we have already said, left to the government. It will be seen that the obligation of choosing the mayor and bailiffs from amongst the members of the municipal council, is a very slight restraint on the choice of the king, or of his ministers

and prefects; the number and division of the sections being such as that all opinions may be, and are represented, in the council. And this, in fact, is what will happen almost everywhere. The mayor and his bailiffs, chosen by the king or the prefect, do not on that account cease to form a part of the municipal council. They are comprised in the number of members that we have pointed out above. The members of the municipal council are elected for six years, and are indefinitely re-eligible. They are necessarily chosen from the list of the electors of the *commune*, that is, two-thirds from amongst the highest taxed citizens, electors by this title, and the other third alone from amongst all the electors indifferently, provided only that three-fourths at least of the members elected are residents in the *commune*. They must be of the age of 25 years or upwards; and in *communes* of 500 souls and upwards, relations, such as father, son, and brother, and connexions in the same degree, cannot be at the same time members of the same municipal council. No one can be a member of two municipal councils. The prefects, sub-prefects, secretaries-general, counsellors of prefecture, and the ministers of the different persuasions, performing their duties in the *commune*, cannot be members of the municipal council.

The municipal councils are renewed one half every three years. At the time of the second election, which must take place in three years, the members going out shall be selected by lot, having for this time only been but three years in office. In case of vacancy in the interval of the triennial elections, an election may take place whenever the council is reduced to three-fourths of its number.

The dissolution of the municipal councils may be proclaimed by the king; in which case the new elections must take place within three months. After this complete renewal, the members who are to be replaced at the end of the third year go out by lot. Otherwise they go out by priority of nomination. Each member of the municipal council is replaced by the electoral section which originally nominated him.

This law, promulgated on the 23d of March, 1831, allowed six months for the making out the lists which were to serve for the summoning of the first electoral assemblies; and they were necessarily to be called together immediately afterwards. These operations are every where concluding at this time.*

One article of the same law having authorised the government to suspend its operation in such places as they should deem necessary, this power has been made use of in several *communes*; but this suspension cannot last more than one year, dating from

* The present article was written, as will appear from this passage and others, in the autumn of 1831.

the first promulgation of the law, and therefore the summoning of the electoral assemblies of all the *communes* must take place at the latest on the 23d of next March.

Paris is excluded from this new municipal regime. The organization of this city is to be the subject of a special law, which has not yet been brought forward; and, to all appearance, will not be introduced during the present session. The motive assigned for this delay, is, that the municipal organization of Paris is closely connected and mixed up with the organization of the department of the Seine. It has been so, at least until now, and the authorities of the department are at the same time the real municipal authorities. The functions of the mayor of Paris are now, in point of fact, divided between the prefect of police, and the prefect of the department of the Seine, the mayors of the twelve municipal *arrondissements* possessing little but the title, with the duty of *officiers de l'état civil*; that is to say, of keeping the public registers of population. The general council of the department fulfils the duties of the municipal council; and there is, even nominally, no other.

The regulating of the municipal organization of the capital will therefore be left, until the laws for the organization of the departments, and for fixing the duties of the general councils of departments, have been passed for the whole of France. In the meantime the Parisians live as heretofore, under the regime of the imperial legislation. The institution of the national guard had strong claims on the attention of the legislature, for the institution existed before the law which regulates its formation, its discipline, and mode of service. The national guard had its origin in the revolution of 1789, and has since re-appeared, and shown itself at every crisis, whether internal or external.

The national guard has undergone many re-organizations under the different governments which have succeeded each other in France. At the time of the revolution of July, it was only established in certain localities; but it was every where spontaneously re-formed, as it had been in the first days of its existence. In this case, as in all other important institutions, the act has preceded the law. In the interval that elapsed between the 27th of July, 1830, and the new law of the 22d of March, 1831, the regulations of the national guard could not be uniform throughout France, but in the greater number of places the legislation of 1791 was spontaneously adopted; that is to say, the citizens, with the consent of the government, took upon themselves the right to nominate their own officers. The law of the 22d of March last regulated and modified in some degree this state of things. The following are its principal enactments:—

The national guard is established to defend constitutional

royalty, the charter, and the laws which it has secured; to maintain obedience to the laws; to preserve or restore order and public tranquillity; to second the troops of the line in *defending* the coasts and frontiers, and to secure the independence of France, and the integrity of its territory.

All Frenchmen between the ages of twenty and sixty years are (or may be) called to serve in the national guard; foreigners admitted to the enjoyment of civil rights conformably to the thirteenth Article of the civil code (that is to say, authorised to fix their domicile in France), may be called on to serve, when they have acquired property, or formed an establishment in the country.

The service of the national guard is *obligatory* and *personal*, with the following exceptions:—

First, Ecclesiastics in holy orders, ministers of the different persuasions, and students in theology.

Secondly, Soldiers or sailors in actual service, those who have received appointments from the ministers of war or the marine, governors or commissioned agents in actual service, by sea or land, workmen belonging to the ports or arsenals, or to the manufactories of arms, organized in a military manner; officers, subalterns, and soldiers of the municipal guards, *paid* (like the old Parisian gendarmerie, the *sapeurs pompiers* of Paris, &c.)

Thirdly, Officers of the customs and excise, of the boards of health, woods and forests, &c.

Fourthly, Keepers of gaols, turnkeys, and other inferior officers of justice or police.

Likewise there are excluded:—Vagabonds, persons convicted of acts of vagrancy, and of course those convicted of robbery, sharpers, bankrupts, &c.

Although apparently *all* Frenchmen are called to serve in the national guard, in reality it is not so. For instance, national guards after they are fifty-five years of age, and old soldiers of the age of fifty, after twenty years' service, may claim exemption from the ordinary service. It is the same with the members of the two legislative chambers, the members of the courts or tribunals, persons employed in the post-office, &c.; on the other hand, none can be entered in the ordinary register of the service but those who pay some personal tax; and their children, when they shall have attained the age required by law. Nevertheless, national guards neither rated themselves, nor the sons of persons rated, who having served since the 1st of August, 1830, should wish to continue, are accepted, and admitted on the ordinary service. All other citizens to whom the law supposes the ordinary service would be too burdensome a charge, are entered on the *reserved* registers, and can only be called on under extraordinary circumstances. The motive alleged for this is evidently

not the only one which has caused their *exclusion*, and not their *exemption* from the ordinary service. Otherwise a choice would necessarily have been left to them. This then is another of the many examples which France has witnessed, since the imperial government, of hypocrisy in the laws. However this may be, it is apparent that the division of the national guard into two classes is very decided. The companies, and subdivisions of companies, are formed solely from the ordinary register; that is, from citizens entered on this register alone, who concur in the choice of their officers. The other citizens are divided amongst the companies or subdivisions of companies in such a manner as to be incorporated with them when necessary.

The national guard is, by the new law, to be organized in each *commune*, and here again are found the same system of parcelling-out, of minute division, the same dread of contact, and of the simultaneous assembling of a great number of citizens. However, the law permits the companies of all the communes in a district to muster in battalion, when such a measure is prescribed by a royal ordinance.

This step must have been adopted in order to prevent the complete dissolution of the national guard, especially in the country. For what is a body of less than fourteen men, and even in the most populous communes, of from not more than fifty to sixty men, manœuvring, exercising, and acting alone?

Each company of from fifty to two hundred men has its captain, lieutenant, and sub-lieutenant, or lieutenants and sub-lieutenants. Each separate corps of from thirty to fifty men has its lieutenant and sub-lieutenant. Each battalion (when a royal ordinance has appointed the national guards of several *communes* to form in battalion, or when in any single town or *commune* more than five hundred are found in ordinary service), has its commander, its colours, its ensigns, &c. And in those districts or towns in which the national guard forms at least two battalions of five-hundred men each, it may by a royal ordinance be formed into legions. Each legion has then its staff, composed, independently of the staff, or officers of each battalion, of a colonel, lieutenant-colonel, major, &c. In *communes* where there are several legions, there may be a general officer; and the officers of his staff are appointed by the king.

The colonels and lieutenant-colonels of the legions are likewise chosen by the king, but from a list of *ten* candidates, framed by the *relative* majority, of—First, all the officers of the battalions forming the legion:—Secondly, of the subalterns, corporals, and privates, nominated, as will shortly be pointed out, to concur in choosing the leaders of the battalions. The chiefs of battalion and ensigns are appointed immediately by the officers of all the

companies forming the battalion, joined to an equal number of subalterns or privates, chosen indiscriminately by a real majority of suffrages.

The officers and subalterns of each company or subdivision, are elected in each *commune* by all the national guards of the company or subdivision, entered in the register of ordinary service; that is, the officers by individual ballot, and an absolute majority of suffrages; the subalterns and corporals by a *relative* majority, and by a ballot on lists.

All officers, subalterns, and corporals, are appointed or elected for three years, and may be re-elected.

The right of thus choosing the officers and subalterns, is certainly one of the victories of the revolution of July, but only as regards what was done under the Empire and the Restoration. For it is, in point of fact, a return to the system existing between 1791 and 1805, at which period Napoleon, seconded by *his* senate, possessed himself of the right of appointing the officers, who themselves afterwards chose the subaltern officers. In our time a complaint has been made against that spirit of distrust which has deprived the national guards, or at least the officers and the electors named by them, of the appointment of their colonel and lieutenant-colonel.

The organization of the national guard is *permanent*, yet the king may suspend or dissolve it in certain places, but in either case, the national guard of those places must be restored or re-organized within the year, dating from the day of the dissolution or suspension; unless a law has been passed in the interval prolonging the delay. The prefects may also, in certain cases, suspend the national guard provisionally in the *communes* of their department; but this suspension can only remain in force for two months, unless in virtue of the preceding regulation it has been legalized, or the dissolution has been proclaimed by the king. A regulation of quite a transitory nature authorizes the government to suspend, if necessary, for three years, the organization of the national guards in the rural *communes*; and for one year, that is, till the end of March 1831, in such *communes* as by themselves alone form one or several districts; and also for one year, in all places, the re-election of officers.

The national guards cannot take arms, nor assemble as national guards, without the order of their immediate chiefs, who cannot give this order (excepting for the service of ordinary guard) without a requisition from the civil authorities, that is, from the mayors. The national guard is placed, both with regard to service, government, and responsibility, under the immediate authority of these functionaries, and under the superior and *hierarchical*

authority of the sub-prefects, the prefects, and the minister of the interior. The ordinary service can only be required within the *commune*. Extraordinary service consists, either in escorting from one town to another convoys of monies or goods belonging to the state, or accused persons, convicts, and prisoners; or in affording assistance to neighbouring *communes*, *arrondissements*, or departments, whether menaced by tumult and sedition, or by the incursions of robbers, banditti, and other malefactors; but this only in case of the insufficiency of the *gendarmerie*, and of the regular troops.

The expenditure of the national guard is voted, regulated, and superintended like all the other municipal expenditures.

Such are the fundamental regulations, constituting the present organization of the national guard.

The law of the 22d of March, 1831, marks out a third kind of service for the national guard, which is that of *mobilization*, as an auxiliary to the regular army, for the defence of fortified places, the coasts, and frontiers. Here the organization is changed, and detached corps are formed in a special manner for this object. This part of the law is to be re-modelled, and a new measure has been very recently brought forward in the Chamber of Deputies.

Next to the law for the organization of the national guard, comes that for the recruiting of the army. A reform in this respect was not particularly urgent, as the law of 1818, for which the country is indebted to the Marshal Gouvion St. Cyr, gave general satisfaction; and its non-performance as to promotions was all that was complained of: but the chamber is at this time occupied in its re formation. There were only two important principles to be introduced into this branch of legislation. One is, that the force of the contingent to be raised for recruiting the army and navy, shall be determined by the chambers every session. This end is answered by the law of the 11th of October, 1830. And the chambers now hold the power of peace and war in their hands, not only indirectly by voting the necessary supplies in money, but more directly by periodically voting the supplies of men. The other principle is, that the *rank* (not the *employ*) of an officer, is an acquired and inviolable property. This principle, of which the germ is laid in the charter, will no doubt be established in the expected law of promotion.

The magistracy of Charles the Tenth having been continued, few changes have taken place, either in the persons or the regulations composing the judicial establishment. A law of the 10th of December, 1830, suppressed the *juges auditeurs*, and forbade for the future the appointment of *conseillers auditeurs* in the *cours royales*. On the other hand, the law of

the 31st of August, 1830, which declares that all functionaries of government or justice, who in the fifteen days shall not have taken the oaths of "fidelity to the King of the French, and obedience to the constitutional charter (that of 1830 being understood), have virtually resigned," has happily opened the ranks of the magistracy to some of the partisans of the revolution of July. Besides this, many members of the old magistracy had previously given proof of their independence, and attachment to the laws; and finally, some judges who, notwithstanding the marked line which they had before taken, have had the impudence to take the new oaths (no doubt with a mental reservation) have been compelled, by the outcry of public opinion, to withdraw from their official stations. The number of these, however, has been very small. A still more important law, inasmuch as it affects the institution itself, and not merely the persons forming the judicial establishment, is that of the 4th of March, 1831, which reduces the courts of assize to three judges, and which modifies the majority required for a verdict on the part of a jury. It may easily be imagined that these courts only giving judgment through the intervention of juries (excepting in cases of contempt), the number of five judges, previously required by the law, was useless; and it was rendered still more so by the third article of the new law, which article directs that the verdict of the jury may be given in future against the person accused on a majority of more than seven votes. It consequently abrogates the 351st article of the code of criminal procedure, which had been previously modified by a law dated the 24th of May, 1821. Article 351 required that when the jurors had, by a simple majority of seven against five, declared the accused guilty, the judges forming the court should deliberate on the same point; these magistrates were then considered as forming, as it were, a part of the jury. Although deliberating separately, the vote of each of them being added, either to the majority or the minority of the jury, the accused might then be condemned by the mere majority of the votes so united. Two magistrates out of the five so added to the majority of the jurors, sufficed in such cases for conviction. According to the law of 1821, a verdict of guilty could only be given by a *majority of the court*, added to a majority of the jury; that is, by a majority of at least ten votes against seven; but the new law renders the intervention of the court useless for the future. The division of seven votes against five will now secure the acquittal of the prisoner; whilst formerly, by the terms of the 347th article of the code of criminal procedure, the equal division of six, and six alone, was favourably interpreted.

In conformity with one of the promises of the charter, the law

re-established, the first representation of a piece forbidden and prevented, by threatening the manager of the theatre to withdraw his privilege, that is, his licence, in conformity with the regulations of a decree of 1806.

We have now finished the enumeration of the changes which have taken place in the political administration and judicial branches of the government, since the revolution of July, 1830. There still remain to be mentioned some other laws, having for their object, either the reform of penal legislation, or transitory and financial measures; or the amelioration of the state of the army: but with regard to these, any details would be here superfluous. Such are, the law of the 11th of October, abolishing the law of sacrilege; the law of the 4th of March, 1831, on the repression of the slave trade, which punishes every kind of participation, whether direct or indirect, in that infamous traffic, as well as any act preceding, accompanying, or following it; the law of the 10th of April, 1831, against mobs collected in the streets; the law of the 21st of March, separating the tax on the person from the tax on personal property, and changing the first into a capitation tax, that is, imposing it immediately on each person liable, instead of its being distributed as formerly between the departments, *arrondissements*, and *communes*, and afterwards assessed upon the inhabitants, &c.

Great improvements will, doubtless, result from the forthcoming law of finance, (the budget of 1832.) The corn laws are likewise about to be revised, which renders it unnecessary to say anything in this place of some temporary measures respecting liquors, and some modifications introduced into the corn laws, by the law of the 20th of October, 1830, and the ordinance of the 30th of June, 1831.

An ordinance of the 12th of November, 1830, which deserves particular notice here, has replaced Corsica within the common law of France, and abolished the special court called the Court of Criminal Justice, continued, contrary to the charter, by an ordinance of the 29th of June, 1814. This court is replaced in this department by a Court of Assize, on the same principle as the other Courts of Assize. It is our intention to continue this account, by laying before our readers the result of the discussion in the present session, of which the most important labours will be, besides the measure of the peerage, the law of the civil list, a law reforming the penal code, and the budget of 1832.

ART. IV.—HISTORY OF LAW REFORM.

LETTER I.*

Lincoln's Inn, Nov. 1830.

After long neglecting my promise to give you some account of the phenomena characterizing the process of Law Reform, as going forward in this country, I have been stimulated by your recent remonstrances, and shall endeavour to make some progress; though it is no easy matter to fix on any convenient period for so doing, amidst the commotion around me, which (however symptomatic of ultimate good) has hitherto been little fruitful in matured results. England, when the work began, was very backward in juridical knowledge: she had to go to school, and, unfortunately, began to practise before she had even well read over her lesson. At present, it is too easy for each legislative speculator to ride his own hobby, on the mere condition of letting his neighbour do the same; while those propositions, which are best digested, and most “hammered” by the aid of experienced men, well paid, and patiently waited on, seem to be the last considered and the least promoted.

The changes so worked are likely to be unconnected, imperfect, and inconsistent. One measure is passed when reform has obtained a very moderate or restricted degree of momentum; another is made—in *pari materia* too—when the current of innovation is strong. One report issues from a commission of inquiry instituted and conducted on principles of guarded decorum: another comes from a body of different parentage and more active spirit. Can their results be expected to be congenial?

Yet, even from these attempts, there is certainly much instruction to be derived. What I see around confirms me in that prudential circumspection, which has sometimes led me to tell you that *your* measures are often too precipitate. My conviction is certainly strengthened, that to give reforms of old legal institutions a fair chance of success—to make them improvements as well as changes—something better must be done than leaving every speculator to push his scheme through a popular assembly; that putting every thing into disorder is not the most orderly plan of action; and that the whole of a system should be contemplated, and a well

* These letters, addressed to a friend in America, have been placed in our hands with permission to make them public. Of this permission we gladly avail ourselves, coinciding as we do in the general tone of the writer's observations, though we may occasionally differ from him in his opinion upon particular points.—ED.

considered plan of operations settled, or at least imagined, before hasty conclusions and partial changes are applied on insulated points.

One thing, however, I may assure you, that the old principle of inviolability for all abuses, however flagrant, is gone for ever. Many of them, to be sure, have fast and powerful friends, and die hard. In the modifications made, whether by judges or the legislature, on the commissioners' suggestions, you may almost always see something which has the effect of preserving the *official* part of a nuisance. But the present position of the cause of legal reform insures it many friends, even from the indifferent, and, indeed, the hostile ranks. Exposure has rendered many things intolerable, which gave little offence while they could be decently concealed. The muddy reservoir becomes a double nuisance when stirred, and even a lazy neighbour will then help to clear it out. The practitioner feels, moreover, that if nothing but exposure be effected, his calling is damaged in repute, and can only be restored by amendment. Personal interest thus identifies him with the suitor's call for redress. Law *must* then be made better ;

“ And certes there is reason for it great,
Withouten that, would come an heavier bale.”

The public hear all around a loud boast of the remedial processes said to be going on. It no doubt imagines that all is working well. How far this is correct we may see by-and-by. I shall begin (taking my stand at the close of the Duke of Wellington's administration), and shall give you a short review of what has hitherto been done and is now on the anvil. We will try the temper of the machinery hitherto employed, and see how its parts harmonise, and judge what it is likely to effect.

The Court of Chancery was the culprit entitled to the first trial and purgation, from the number and enormity of its offences. Unfortunately, its being the *first* tried, seems hitherto to have given it something like impunity. The scythe of reform, at that period of the process, was unsharpened; the harvest was ripe; but the labourers were either wanting, or without spirit and example. The Commission of Inquiry (which issued in 1824) was directed to the heads of the court, and to several parties intimately connected with the old system. There was, therefore, no indecorous prying into the administration of justice in the judicial department, and little attempt to grapple with the glaring subjects of complaint any where.

The report of this commission formed two huge folios, printed in 1826. It cost the country many thousands, and it rests, for the perusal of the curious, a monument sacred to the memory of its authors.

For a while, this effort seems to have exhausted the energies of the reforming principle. But, not long afterwards, Mr. Brougham selected the field of law for one of his gigantic exertions; and, after a speech from him of some hours' length, the cautious minister of the day, Sir R. Peel, conceded a half-and-half measure;—the common fate of such proceedings in England, when total resistance becomes desperate. Two commissions were issued, which certainly, in spirit and composition, marked a very different æra from that of the Chancery board, which never was intended, and certainly was not calculated, to do anything effectual. For these two commissions were carved out two branches of the subject,—the *practice* of the courts of common law, and the *state of the law* of real property. Objections are obviously applicable to such subdivisions of a subject, in which distinct lines of separation are not very clearly marked out; and to the want of any general supervision, which ought to exist somewhere. As to the men selected or rejected, observations also were made. It is useless, however, to remark on want of general acquaintance with sound principles of jurisprudence. It would only be saying what must be said, with very few exceptions, of all English lawyers—their legal education rarely travels beyond the short limits of a particular department, even of their own law.

Both bodies of Commissioners have certainly exerted themselves meritoriously; and the greater part of the "Common Law" Commissioners fill the new judgeships, which the first measure founded on their suggestions established (*absit invidia!*) Successors have been appointed who, though of less weight of reputation, have entered zealously, and in the same spirit, on the continuation of their predecessors' work.

You who have seen how these things are managed in "the old country," will, of course, be aware that this apparatus costs no trifling number of thousands per annum. Of this I shall not complain;—the labourer is worthy of his hire;—but I shall certainly use the cost, and the country ought to use it too, as a sound argument for seeing that adequate fruit results from the operation.

It will of course strike you that the English plan of operations is, from the beginning, defective. When different branches of our legal institutions are handled by bodies of such dissimilar spirit as the Chancery and more recent boards evince, it is plain that if unity and consistency of result arise, it will be in spite, not by means, of the scheme. The machines are quite different—

"L'un va en tortue, et l'autre court la poste."

But were it otherwise, still is it not strange to suffer portions even of the *administration* of the law to go untouched, and to leave *the law* itself almost unnoticed? It has not been so else-

where, and it would not be so here, if the work were to be done again. But, meantime, the defective system has been acted upon, and is still pursued. Mr. Parkes has shown us, that in New York you have dealt with the matter much more wisely. The English Court of Chancery passes through an inverse process to the one you pursued. The Commissioners' report was first followed by a code of imperfect practical details; next, by abortive attempts to settle and re-arrange the constitution of the court, which, if successful, would render new practical rules necessary; and as to the law to be administered, and in which the mischief after all often lies, they have let it altogether alone; except so far as the "Real property" Commission may deal with part of it.

Excuse me if I advert again to the differences in the plan and scope even of the boards of inquiry on which we are now acting. The "Real property" Commission (which owed its origin very much to suggestions as to that branch of the law in the Chancery Report) embraces a division of the *law*, with no direct reference to its practical administration; and is confided to persons whose views and movements differ widely from those of the suggesters. The "Chancery" Commission, we have seen, was not even allowed free range over the whole machinery of its own court. The "Common Law" Commission grapples as yet with mere *practice*; but then it deals with its subject searchingly; not being, however, directed to any investigation of the *law* administered in the courts. The consequence is, that even while it is at work, legislative schemes are in discussion, which would sweep away the very materials which it is moulding. Thus the Commissioners abolish local jurisdictions, and strengthen the force of Westminster Hall, while a bill is running side by side with their own, which would make local courts universal, and prove the old force of the higher courts to be too strong instead of too weak.

What wonder that, under such circumstances, considerable doubts are entertained of the successful issue of pending operations? If unconnected, detached, and inconsistent alterations are multiplied, who does not suspect that a chaos will be created rather than removed; and that after all the trouble, expense, and annoyance of repeated changes and experiments, the work must begin again on some more harmonious basis?

LETTER II.

Nov. 1830.

The report of a Commission of Inquiry has here rather a tortuous course from the first. It is delivered to his majesty's secretary of state for the time being, and there (as far as official con-

sequences are concerned) it might usually lie, guiltless of good or evil. The House of Commons, however (for the convenience of its members), usually prints a copy; which is then pirated and sold by the booksellers; and is thus, by a sort of breach of privilege, obtained by the public, whose money has been expended upon it. Neither in theory nor practice, however, does it appear to be any one's duty to act upon it. The Commissioners have no authority to prepare bills. The "Common Law" Commissioners did so, but had them thrown back upon their hands by Sir J. Scarlett, the late Attorney-General. The report, in short, is a "waif or stray." Here and there we find a legislative fisherman who hauls up the casket in which the Commissioners have packed up their scheme, like the Genius bottled off by Solomon; but, generally speaking, the reports slumber on the shelves till public opinion is once more roused; and then comes forward some disjointed scrap of the subject, dignified with the name of a measure "recommended by the commissioners," who would not willingly own a limb of the misshapen bantling. It comes in late in the session—is buffeted about—falls through, nobody cares how—or passes into a law so crudely fashioned, that it is sufficient employment for the next session to cure its blunders.

I will now note the actual results of our proceedings, and first enumerate the fruits of the inquiry into Chancery.

1. The report having been made in 1826, Lord Eldon himself kept aloof from a practical adoption of its suggestions. But still the ministry of the day thought it decorous to lay the *whole* as a project before parliament. Accordingly, Sir John Copley, then Master of the Rolls (since Lord Chancellor), obtained *leave* in that year to bring in a bill (which, however, he took care not to bring in, in fact, till 1827) "for the improvement of the administration of justice in the High Court of Chancery." That bill, it is true, made no pretence of remedying any judicial defects of the court. The Commissioners had evaded the subject. It cut down none of the heavy pecuniary abuses. That topic also had escaped notice. It contained, however, 26 sections, and 145 clauses of practical regulations, which had been laid down in the report, and on that account had the advantage of unity of purpose.

A change, however, came over the drama—the scene shifted. Lord Eldon lost, and Lord Lyndhurst obtained, the seals. In grasping at the prize he dropped his bill, which has been heard of no more.

From this time the theory of Chancery reform appears to be, that the head of the court is the proper person to prosecute the necessary measures, and to judge what they should be. Promises were rife; and practical statesmen were satisfied to ask, and Lord Lyndhurst was hasty enough to give, pledges that a chancellor

brought up in a common law court would have knowledge to plan, and vigour to execute, full remedies for the accumulated abuses of centuries.

To one point his lordship was able to advance in 1828; namely, to the publication of a detachment of new "orders of court" in matters of practice. In fact, Sir J. Leach (the Master of the Rolls) compiled these regulations according to his own version and emendation of the Commissioners' suggestions. Their completion was to be the work of parliament. But though Sir John is an operator of dispatch, the legislator was a workman of another order; and to this day that part of the plan is undone. The orders were, as far as they went, crude, hasty, and unsatisfactory.* Though they departed from the report, they remedied none of its deficiencies; and, taken apart from those for which parliamentary authority was wanted and never arrived, they were, at best, imperfect and troublesome, in imposing upon practitioners the needless trouble of learning a new lesson twice.

The theory of Chancery Reform, however, was now quite altered. The first policy had been to throw all into one bill or code. Now the work was to be done by scraps. Yet in the next years, 1829 and 1830, Sir Robert Peel established the consistency of his ministry's character by urging on parliament to abstain from any legislation, on the suggestions of the other commissioners, till their whole schemes could be viewed together—a policy very soon in its turn abandoned.

At length, in 1829, Lord Lyndhurst did announce a *Parliamentary* measure of Chancery Reform. Still nothing appeared of the dropt portion of the practical regulations. Still no attempt to relieve from *expence*, not even from *delay*, except as regarded the appointment of a third inferior equity judge, which constituted the whole of his lordship's new proposition. So far as the Commissioners had indicated any opinion, this proceeding was at direct variance from it. They pointed at lightening the court by removing some of its business to other jurisdictions. The bill, however, was, perhaps designedly, sent down to the Commons too late for them to do anything with it. It had served its turn in whiling away the session, and one of the administration which had proposed it quietly moved its rejection.

Pass we on then to the campaign of 1830. The same actors were on the stage. Rumours were circulated of projects of decisive importance. The king's speech promised ministerial attention. And what at length was produced by the Chancellor? nothing

* These orders will be found, with an ample commentary, in *The Jurist*, vol. ii. p. 137.—Ed.

more nor less than a repetition of the farce—the “damned” farce too—of the preceding session; and this was the grave reconsidered remedy for the deep-seated, loudly-proclaimed, practical grievances of the court. Moliere alone can find a parallel for our *court-physician*, our M. Macroton. “Si bien donc que, pour ti-rer, de-ta-cher, ar-ra-cher, ex-pul-ser, é-va-cu-er les dites humeurs, il fau-dra une pur-ga-tion vi-gour-reuse. Mais au pré-a-la-ble, je trouve a-pro-pos, et il n’y a pas d’ in-con-ven-i-ent, d’u-ser de pe-tits re-medes a-no-dins; c’est-a-dire, de pe-tits la-ve-mens ré-mo-li-ens et de-ter-sifs; de ju-leps et de si-rops ra-frai-chis-sans, qu’on me-le-ra dans sa pti-sa-ne.”

Either the same game was meditated as that of last session, or the House of Lords at least made no alteration in its plan of treating the other house. Lord Lyndhurst, in March 1830, laid upon the table his dropped bill of last session, and there till the end of May it rested. At length, after a division in a house of *fifteen* peers, (eleven being for, and four against it,) the lords sent this bill down; having only a few days before, with some inconsistency, passed a bill for adding a fifth baron to the Exchequer, a court possessing a full equity establishment, and therefore now competent, with proper arrangement, to relieve the chancery of a part of its burthen, instead of adding to the latter overweighted establishment.

Once more then, in the month of *June*, the usual close of a session, we find this poor bill knocking at the Commons’ door for admission; and about the same convenient period two “*wing-bills*” were heard of. The precise intent of their framers was never developed, and probably never was intended to be so; but they were understood to point at some regulations in the master’s and registers’ offices. By the end of June, a preliminary opposition in the Commons to the introduction of the parent bill, was overcome by a bare ministerial majority, and then the king’s death relieved the government from their embarrassment, and from the necessity of once more giving their own project its *coup de grace*.

Meantime, as well to illustrate the truth of the proverb, that “where there is a will there is a way,” as to do an act of justice to the Solicitor General, Sir E. Sugden, apart from his official character, I ought to observe that he, in his individual capacity, brought forward in proper time, and by exercising proper diligence got passed (with sundry mutilations by the lords) a bill for remedying defects in Chancery proceedings as to “*contempts*,” and two or three other bills anticipating part of the functions of the “*Real Property*” Commission.

Thus ends the history of Chancery Reform down to the close of the Wellington administration at its dismissal in Nov. 1830.

II. I proceed then, secondly, to some historical notices of the results of the "Common Law" Commission down to the same period.

Two reports have been made. In the one, (Feb. 1829) the commissioners opened their ground rather widely, and treated of the two first heads into which they divided their work. Under the head of general "Dispatch of Business in the Courts," they recommended the abolition of the ancient Welsh local courts, where all the proceedings were conducted on the spot; the judges being practising barristers in Westminster Hall, who twice a year went down to try the causes. Their situations had generally been the subjects of mere ministerial patronage; the administration of justice in their hands had no weight; and their permanent attachment to one station associated them much too intimately with local interests.

Consequential on this abolition, the Commissioners proposed the appointment of an additional judge for each of the courts of common law. They were, however, too timid to suggest any plan of apportioning business among the three courts beyond opening the Court of Exchequer to general practitioners—identifying the practice of the three courts—equalizing the remedies "in error"—relaxing to some extent the monopoly of practice claimed by the sergeants in the Common Pleas—and transferring informations and session cases to the Exchequer. They also suggested some alterations as to the sittings at Nisi Prius, and at the judges' chambers for the dispatch of ordinary business, the circuit arrangements, and the separation of the equity from the common law functions of the Exchequer.

Under the head of *process*, they proposed several amendments in the forms; and as to the practice in *arrest, bail, outlawry, &c.*

By their second report (March 1830) they treated of the forms of particular actions; and of new powers to the courts, for diminishing the expence of evidence, facilitating the verifications of documents, examining parties and witnesses on interrogatories, and giving relief in what are called "interpleading" cases. They proposed to give arbitrators new power over witnesses, and to forbid revocation of submissions to arbitration. They further proposed the very questionable scheme of giving judges a summary power of *compelling* references in cases of account; not to responsible officers of the court, but to private arbitrators, to be named by the judge, if the parties differed. The remainder of the report discusses the important topics of allowing pleadings to proceed during vacation, shortening their form, and reforming not only their style but substance, with a view to diminishing the quantum of proof by limiting the issue to the precise point in dispute.

To the reports were added the propositions of reform, so framed

as to be easily convertible into enactments; and in fact it is understood that bills were prepared. But it soon appeared that every thing was "afloat;" that no one considered it his business to co-operate with them; and that Sir J. Scarlett (then Attorney-General) had his own schemes, which often ran in another direction.

Who, it was asked, was to be actor? The chancery plan of moving through the head of the court, was wisely enough not adopted, though Lord Tenterden has since recurred to it. At last Sir R. Peel and Sir J. Scarlett took such parts as each affected. The former, warned by experience in such cases, laid the foundation properly, by passing an act for taking all the fees of the common law courts (why not the Chancery also?) into the hands of the Treasury; paying the officers their past average incomes; and thus removing the individual obstacles to improvement, and preventing partial changes from, in fact, increasing the cost of subsequent alterations, as had sometimes been the case before.

Pray, if you can meet with it, devote an hour or two to the amusement of tracing, in our "Mirror of Parliament," the history of Sir J. Scarlett's bill in the last session. One while you will see Sir R. Peel's plan followed, of interfering with no general measures, till the whole could be in view. Anon, Sir James breaks out not only with general measures originating with the Commissioners, but with some of his own also; then again they are to pass into a separate bill—then they are to go back—then they are not to go at all. At one time all arrest for sums under 100*l.* is to be abolished. The next day the new scheme is abandoned. The Commissioners' suggestions are treated as mere building materials for selection. The organ of the legal operations of government promised by the king's speech, is heard talking of *this* thing, as having *his* concurrence, and therefore being proposed; and of *that*, as being not liked by *him*, and therefore rejected. And a curious hand he made of the ground he attempted to cultivate; verily "*posuit terram illam in brigam.*"

I have now before me this choice specimen of British law-making. It is print the fourth—in the Commons alone—as it stood after the third recommitment on the 5th July, after four months' concoction. The bill, so painfully elaborated, as it passed the Commons, abolished the ancient Welsh courts, and added a fifth judge to each of the three king's courts; thereby providing for an additional circuit. It opened the "*plea side*" of the Exchequer to all attornies; gave power to fix the four terms at permanent periods; enabled eight judges, including the three chiefs, to make rules in practice, binding on all the courts, and prohibited particular rules by the courts separately; and it extended to the suitors a provision, which the Welsh courts had enjoyed, for getting final judgment in

ordinary cases immediately after verdict. It moreover in effect formed one uniform court of error from the three common law courts.*

In this form the bill reached the Lords on the 13th of July, only ten days before the end of the session,—a suitable return for the mode in which the Lords treated the Commons in the case of the Chancery bills. Though no time could then be afforded for discussion, the Lords (or rather one lord, the government standing by passive), were fertile in amendments; to which the Commons, who received the bill back only twenty-four hours before the dissolution, had merely time to say aye; Sir Robert Peel advising them not to ask the Lords' *reasons* for their alterations, for fear they should turn out to have only bad ones. The principal alterations consisted in striking out the power to give judgment in vacation, lest it might put the master who taxed costs to inconvenience in his holidays; in dispensing with the useful provision, that the chief of the court should always form one of the bench, so as to prevent his turning himself as Chancellors do, to matters foreign to the business of the court; and in fixing the Terms by the bill; which, however, it effected so clumsily as to render a new act necessary.

You will observe that this bill left untouched the useless and expensive machinery of the palatinate jurisdictions. There are political jobs connected with these concerns, which render their abolition not very easy of attainment. Their turn, however, must sooner or later come.

You will see, too, how much of caprice and accident go to the composition of our proceedings; and how futile it is to look to a government, or the legislature, for rational and systematic improvement while things go on in such a train.

The bill was announced by Lord Lyndhurst as intended to accomplish the desirable object of assimilating the discordant practice of the three courts. It certainly contains a clause, *authorising* eight judges to make rules in future binding the whole. If it was meant thus to point out to them the duty of harmonising the existing details, why was it not made imperative? My fear is that this

* The bill is wholly deficient in details for the establishment and practice of the court of error; and I am told that, in fact, instead of any of the three pre-existing establishments being used, they have been left for compensation, and new patronage has been exercised in making fresh appointments. Sir Robert Peel, some years ago, tried his hand in a measure for preventing vexatious and dilatory recourse to proceedings in error; but he effected his purpose in a very objectionable mode, and one which gave rise to a great expense in compensation. All that was wanted was for the court to expedite its proceedings, so as to defeat the purpose of resorting to it for delay. Sir Robert prohibited appeal altogether, except on terms of giving security for actual payment of the sum in dispute. The effect of this has been to make one law for the rich, and another for the poor man. The former, whether his purpose be honest or vexatious, can easily perform the condition; the latter is stopped, whatever be his design.

power (given as it is before the basis of reform has been first settled by parliament, under the advice of the Commissioners) may work mischief and confusion. It sets up a rival power of legislation; so that these eight judges may, if they please, forestal, clog, or defeat many projects of great importance.

I shall notice hereafter Mr. Brougham's sweeping scheme for replacing the Welsh judges, not only in Wales, but in all the counties of England; and shall leave the results of the two reports with the passing of Sir J. Scarlett's bill, and the elevation of three of the Commissioners to the occupation of the benches they had thus erected.

III. The results of the "Real Property" commission have also extended to the publication of two reports. The first (May, 1829), is mainly devoted to topics, which some think might as well have been left to the last, or postponed to those of more practical consequence. I refer to alterations in the positive rules of inheritance, as regards the ascending line, half-blood, &c., the limitation to special heirs, and the ancestors' seisin.

The more practical propositions relate to dower, the abolition of fines, recoveries, and real actions, and the reduction of the period of limitation.

Their second report (July, 1820) is much more practical; being devoted to the consideration of the policy of establishing a general register of deeds, &c., which they recommend. It appears that they have begun to be sensible of their error in opening their ground too widely at first. They had then sanctioned or broached Sir Robert Peel's doctrine, of doing nothing till *all* was ready; but by their second report, they humbly submit the expediency of something being *effected*.

LETTER III.

Nov. 1830.

We have passed through our chronicle of some years' proceedings, since law reform was taken up in earnest. The first parliament of William the Fourth is sitting. Many are the hands who, at various times, have been labouring at the work—*sum cuique*. Mr. Michael Angelo Taylor, and Mr. John Williams, who, as volunteers, have protected the chancery poor-house, have lately resigned their office. Lord Althorp and Sir Robert Peel once plotted, but now relinquish, the construction of county courts. Lord Lyndhurst has hitherto ruled in Chancery renovations, except where Sir J. Leach dictates practical "orders." Sir E. Sugden patronises insulated measures, all useful as far as they go; and Mr. Spence (a Chancery barrister just come into parliament)

threatens more sweeping interference. Lord Wynford sounds a flourishing note of determination to go far beyond the common law commissioners. Lord Tenterden seems smitten with the love of innovation. Sir Robert Peel has touched every thing, and sketched in outline what he could not master in detail. Sir James Scarlett is a little sobered by his last campaign; while Mr. Brougham has run into the ring, hitting right and left, with an ambitious project—purely his own—and proceeding on quite opposite principles to those which the commissioners and parliament have sanctioned. I beg pardon for one omission—that of the learned common council of the city of London; which has selected the bankrupt laws for its subject. Would that the Locrian law could place a restrictive cord, *in terrorem*, around the neck of each speculator, till some plan could be devised for beginning at the beginning, and keeping in harmony whatever work is done!

What makes a looker-on the more prone to despair, is the sad inaptitude for business displayed by parliament. As if conscious of being itself the proper subject for reformation, its proceedings indicate hopeless impotence, or listlessness, as to any serious care for minor institutions. For matters of pecuniary or personal interest—on such questions as whether a lord is to retain his lady twenty-four hours, more or less,—there is no difficulty in obtaining adequate attention. But as to the administration of justice, it may be discussed as it can—after midnight—at the dawn of day—to empty benches. A bill comes in, really different from what it is pretended to be. It is supposed to represent the judgment of commissioners, paid at enormous cost for sound advice. In reality, it represents the caprice of an individual. If begun right, there is abundant opportunity of quietly setting it wrong. It changes so often, that all get tired of watching the Proteus; and at last it is called a law, in a shape which its very parent disowns; frittered down by compromises, entered into in indifference or despair; and best honoured at its legislative dismissal by the hope that some one may think it worth while, in the next session, to correct its blunders or supply its deficiencies.

Few, beside practical lawyers, take sufficient interest, or possess the requisite knowledge, to watch these measures. Yet the lawyers are very unsafe guides on whom to rely. Few can, or will, travel an inch beyond their peculiar department. Besides, no one of them treats his parliamentary duty as a primary one; or, in fact, as his *business* at all. Professional etiquettes and interests impose limits and restraints on the exertions of even the most public-spirited. If the task were not an invidious one, I could easily produce some glaring cases of both positive and negative influence of this sort on parliamentary conduct. Again, the points to which the lawyer could attend with most effect, would be the abuses of his own par-

ticular court and line of practice. Yet these are precisely the subjects which his daily duties and interests render it most delicate for him to speak too plainly about. As to those who have passed through the turmoil, and who now repose in the calm dignity of ample pensions, little can be said except that they are, for the most part, content to receive those pensions, and to keep out of trouble.

Little satisfaction attends a debate on one of these crude bills. Men out of the profession launch into vague exaggerations; which might be easily exposed, but which still occupy time and lead the audience astray. There is no guide to refer to when the measure is one of individual concoction. Of the lawyers who take part, some are tired of discussing what the hearers, who are to decide, cannot comprehend; and others use their knowledge to lead the uninitiated astray. A leader on either side sums up in pompous generalities; a division takes place on some point, in which the question goes right or wrong, as accident or the politics of the day direct: the assembly is tired; and the rest, perhaps the most important of the details of the measure, are left to the mover's mercy.

And here I must notice the scandalous inaccuracy and slovenliness of British legislation; to which the bills introduced by legal men form no exception: though the same men, in their ordinary professional practice, would blush at the smallest inaccuracy. And why is this? Partly because the lawyer goes into parliament merely as to a genteel club; and partly because the ambitious legislator is often profoundly ignorant of the practical details of his own project, and too proud to ask or receive assistance. No provision is made by either house for official revision of the laws which are introduced, so as to secure their being even effectual to their avowed object.

While parliament thus neglects the labours of the Commissioners whom it pays, and government declines, or is too indolent to adopt their suggestions, it may well be asked how their future progress can escape embarrassment. What propositions are they to assume as the basis of succeeding operations? What unity can there be in their work? Surely, when special legal advisers have been, on the vote of parliament, called in by the crown, common policy and decorum require that their plans should at least be submitted in their own form to parliament for its consideration; and the ordinary legal officers of the government should not be suffered to interpose their private opinions and disfiguring caprices. I must think your New York plan a much wiser one, of instructing a small number of trustworthy persons to act as well as to give opinions,—requiring them to prepare and submit their propositions to the legislative body—nay, even committing to the same persons the subsequent task of editing and illustrating the new laws.

Sir Matthew Hale, long ago, suggested a plan of law-mending very like what we seem now to want. He proposed to appoint a committee of heads and sages of the law; who should prepare bills; and should, after a second commitment in each house, be called in and heard on the reasons and details of the intended laws. Thus, he remarks, would laws be better "hammered than has been wont:" "and never more wanted than now," to use Roger North's words, "when statutes of broad influence upon the people's concerns are so frequently sent out from the parliament."

From a silly prejudice against what is called "codification" (in which it is impossible to make people understand that codifying, or law digesting, does not necessarily imply law *making*, or even materially *altering*), a system has arisen here of taking every thing by insulated points. This plan, if it goes on, will bury the lawyer beneath a chaos of individual legislation. Sir E. Sugden's Acts of last session form already a neat volume. Sir J. Scarlett's Act, with its appropriate commentary, forms another. Lord Tenterden and Mr. Campbell threaten each a volume for the ensuing session; and it is well if Wynford's and Brougham's Acts do not furnish at least two more: each, of course, to be followed by a supplement of "Acts to amend."

The distrust and uncertainty which prevail tend to increase this variety. Despairing of the whole, each reformer takes advantage of the policy of the day to aim at some particular defect; and thus a give-and-take system of mutual courtesy prevails, by which each is content to gain impunity for his own bantling, by extending it to that of his neighbours. Since Sir Robert Peel's Act respecting fees, this may, it is true, be done with less hazard in the courts of common law than before. But, in dealing with the Court of Chancery (to which, for some unfathomable reason, his bill did not extend), it is impossible to move any partial alteration without the hazard of mischief and confusion, and of increasing the very gains which must hereafter become the subject of compensation. Unfortunately, some people seem to be always at hand who have the good fortune to turn even reform to account,—to make "bad events creep out o' the tail of good purposes." I have been told of some curious instances in which the Chancery "orders" actually increase the gains of some of the officers, whose emoluments must, sooner or later, be bought off.

LETTER IV.

Nov. 1830.

Having told you what has been done, and perhaps shown you no very promising prospect for future operations, I shall add some observations on the probable nature and extent of the reforms which

are likely to be brought under discussion through the agency of the "Common law" Commissioners, as now constituted.

At present, they do not seem to consider as within their vocation, either a revision of our general law of debtor and creditor, or an adaptation of proceedings to the recovery of small debts. This is unfortunate, as both are topics intimately connected with their inquiries. But as matters now stand, the benefits capable of being realized from a successful progress in their work of reform in the upper courts, are of great importance as regards expence, time, and the realization of the fruits of legal success.

In their suggestions as to new-modelling the forms of processes and pleadings, the Commissioners' aim will be, 1. To frame their new pleadings, so as to narrow the question put in issue to something as near the real point in dispute as may be; and thereby to reduce the heaviest sort of expence, that of witnesses. 2. By cutting off useless formalities, to relieve the suitor of the direct and collateral official fees which they bring upon a cause. 3. To place the remuneration of the practitioner, in each branch of the profession, on a sounder basis than that which length of paper affords; and to adapt it to the new scheme of pleading, under which it will be necessary to grapple with the real difficulties and specialties of a case much earlier than at present. This will have the further good effect of often stopping a fruitless litigation in the outset. The payment by length of paper is as inconvenient to the suitor, as the payment of the apothecary by quantum of physic is to the patient. The suitor's interest would be eminently consulted by paying for the real work done; even if he gave more than the net remuneration which his adviser now gains. I am told that, consistently with paying full as high a net rate of remuneration as at present to the effective workman, a diminution of charge to the suitor of thirty or forty per cent. may be effected by altering the existing system; independently of the great saving which may be realized in the present cost of witnesses, and in the removal of ruinous delays and their attendant expences. When one considers the enormous sinecure revenues now drawn from the law offices, it is evident that there is abundant scope for relief in this quarter.

The greatest source of expence in a cause, is undoubtedly the trial, if it reaches that stage. Besides the relief which a better system of pleading, and some proper protection for the verification of documents, will afford, the Commissioners have it in their power to remove the aggravation which the evil receives from the bad arrangement which exists in many counties as to the place of holding the assizes: though really, if you knew the obstinacy with which this flagrant abuse is defended, and the resistance made to all projects for hearing the causes in more convenient situations, you would be apt to give up all amelioration as hopeless.

nishing the power of recovering them. Some sweeping schemes for facilitating the recovery of small debts, by supplying law at the minimum of cost, seem to run on an opposite theory. Yet our legislature discusses each alternately, without seeming to think that they have any bearing the one on the other.

LETTER V.

Nov. 1830.

The closing observations of my last letter led me directly to the great topic of present discussion, as a popular measure of law reform, which even the newspapers fancy they understand, and therefore talk very loudly about; I mean Mr. Brougham's "Cheap and Domestic Law" project. I shall think it safer to let my observations run in something more like a digest of what the disputants around me are saying and urging, than in any original argument of my own. To say the truth, however, the legal arguers are nearly all on one side, for there never was a project more generally condemned by the judgment of those most competent to understand it.

My own conviction is, that it is at least *ill timed*; as turning public attention still more from the steady prosecution of the Commissioners' suggestions, to run after individual and speculative projects; not only forming no part of what those who, having well considered these subjects, have advised, but directly at variance with the whole principle on which they have been strengthening the *central* institutions of the country. With the greatest deference, moreover, to the unquestioned talents and patriotic energy of its promoter, I suspect the lawyers are right in thinking that neither his habits nor experience fit him for any such office as that of a practical legislative regenerator. As an agitator for reform, an exposé of abuses, a stimulator to better things, he is unrivalled: but neither our knowledge of the turn of his mind, nor our experience of his previous undertakings, entitles him to expect much confidence in the task to which his ambition seems now to direct his energies.

There are two opposing schemes of legal administration, the *central* and *departmental* systems. By the first (which the English plan for the most part follows), legal authority, and the control of practice, and of interlocutory proceeding, emanate from the metropolis; the theory being, that the unravelling of *facts* is obtained locally by means of circuits. Thus unity of legal principle and practice is preserved; the law flowing at once from the fountain head, and without necessity of appeal, except in very rare cases.

The practical conduct of business is adapted to this system, and any inconveniences attending it are every day diminishing, under the increased facilities of central communication. The bar is thus a concentrated body deriving its knowledge from practice at the source; kept aloof from local entanglements, and subjected to the wholesome control of the opinion of the whole body of their associates.

By the second scheme the law may be all primarily administered, as in France, in numerous local tribunals, by inferior judges, whose law can only be kept at all straight by ready appeal. This often involves two suits for one; there must be diversity of law and practice; both bar and bench are exposed to local influences; and for abuses in interlocutory practice, there must be little or no redress.

The advantages of the central system are obviously great, and subject, as it appears to me, to no drawback, unless on the ground of expence; and it remains, by-the-by, to be seen whether, when improved, the upper courts *will* be behind even in that respect. Indeed while English law remains in its present state, it seems impossible to contend that anything but its administration under almost the same roof can keep its current tolerably even. As things are it may remain "that great and admirable mystery," which Lord Clarendon and his followers "look on with affection, reverence, and submission." A departmental system could hardly support itself for a year without a previous consolidation, digest, and simplification of the law itself.

In speaking of the central system, of course I do not mean to say that what may be called the *executive* branch of the administration of the law might not be much improved in England, by the establishment of more and better departmental authorities, for the adjustment on the spot of accounts, and some other subjects of difference. Though its *head* be in London, its *arms* should reach every where. I trust that great improvements of this sort will be made, and that the various reforms suggested by the Commissioners will be carried into effect. Still we hear the point mooted, whether there are not classes of legal business to which cheap and local courts might be applied with a considerable balance of advantage. To this I should say, that it is perhaps worth while to try the experiment, as regards debts of a small amount. But it must only be looked upon as an experiment. In England public opinion has hitherto set strongly against these inferior jurisdictions; great difficulty being found to exist in obtaining judges who command public confidence, and in steering clear between the evils of easy appeal with increased litigation on the one side, and the want of protection against unjust decision on the other.

In considering Mr. Brougham's bill, however, it is sufficient to say that it bounds itself by no such limits. It aims at making the local jurisdiction the rule, and the comparatively small portion of business which would be left to the upper courts, the exception. Carried to the proposed extent, it must in the end absorb the existing institutions, and especially the circuits, as much too wide and expensive for any thing that will be left for them to do. There will be no sufficient business for the members of a bar to follow, and the metropolitan courts will furnish no materials for their education.

The outline of the project is, to fix in each county a judge, being a barrister of standing and character, at a salary of 2000*l.* a-year, and a suitable establishment of officers. The court to have exclusive jurisdiction over ordinary matters under 100*l.* value, and to any amount when the parties can be got in the outset to consent. As regards minor demands, the jurisdiction is to be final, and in other respects to be subject to review by motion before the judge at the assizes. The cause is to be in general tried where the *defendant* lives; the judge making a circuit among the principal towns twice a year. Besides his duties as judge, he is to be permanent arbitrator in his district; to hold courts of reconciliation for optional resort before litigation; and to have jurisdiction for the recovery of legacies under a given amount.

The prominent objections which have been urged to this plan are:

1. Its inconsistency with the pending proceedings, by which local jurisdictions, such as the Welch judgeships, have been abolished as public nuisances, and increased force has been given to the central courts; and the impolicy of settling any plan for supplying supposed deficiencies of the upper courts, till it is seen what they can, by ameliorations, be made adequate to perform.

2. Independently of the enormous patronage which such establishments in every county in England would throw into the hands of the crown (for it is not proposed that the people should have any voice in the appointment), the expence renders such a project perfectly ridiculous. It would amount to full 200,000*l.* a-year, while the expence of the metropolitan establishments would remain the same.

3. The difficulty of finding suitable judges to discharge such various functions; considering that if they reside wholly in the country, and are attached to one county, they will be open to all the objections which were fatal to the Welch judges; and that if they practise in town, much of the business of their courts must stand still, and be sacrificed to their professional interests.

4. That no security can be obtained for due and economical

discharge of, and control over, the interlocutory business of such courts; while, on the other hand, in the upper courts, this is cheaply and satisfactorily administered by the judges on summons at their chambers.

5. That such an administration of justice involves either incessant appeal, or universal vagueness and laxity of legal principle.

6. The plan is directly opposed to the rational principle of acting in reforms on the basis of established institutions, and can only be carried into effect by the dislocation and degradation of whole classes of society; classes, too, to which the deepest interests of almost every member of the community are committed, and from which the occupants of the most responsible offices must be selected.

The supposed advantages of the project are denied, or met by counterbalancing inconveniencies.

1. The theory of *domestic* justice proceeds on the supposition of disputes lying between neighbour and neighbour; whereas, in a commercial country like this, the large dealers have customers all over the kingdom, whom they must follow, with their witnesses, into the courts of the respective districts, and, of course, through the agency of as many local attorneys.

2. The plan gives no greater frequency of *trial* of causes than the present two circuits in the year afford.

3. As to *cost*—the legislature will be in the dilemma of either giving insufficient remuneration to practitioners, from which would arise one of the worst pests of society; or, if they are allowed a *sufficient* remuneration, it may be asked why it should be assumed that the practitioners in the upper courts require *more*? For all other purposes of business, concentration is, from choice, resorted to, as both a convenience and a saving of expence. Office fees must, in order to maintain a judge and his establishment in every county in England and Wales, be on a higher scale than would be necessary to remunerate the existing town establishments for doing the duty, especially as, whether they do the duty or not, they must still be kept up. The sweeping away of the Welch courts, and transferring their business to the upper courts, did not render it necessary to give to the latter one officer more.

4. The proposed appeal to the judge of assize is objected to, as being not only necessarily exceedingly expensive and dilatory, but inadequate to the purpose; it never being expected that very sound law can be administered in the hurry of an assize. There is no doubt that even a motion in Term would cost less than a journey to an assize town for such a purpose; and an application by summons to a judge in chambers may be made at a small fraction of the expence.

The other functions of the local judge, though much extolled by the eulogists of the measure, are probably mere speculative make-weights. Arbitrations will go on quite as satisfactorily without them ;—there is no want of arbitrators if parties wish for them ;—and the functions of a referee are both inconsistent with and noxious to the judicial character of such an officer. The courts of “ Reconciliation,” in the only country whose extent of dealings renders it at all parallel to this, are considered a mere jest, and deserve to be so. As to the *Legacy* court, no common law judge can usefully handle the majority of cases which would arise, and he would be continually in conflict with the Equity courts, which can easily be armed with a summary jurisdiction, quite as cheap, and much more efficient.

To help out the project, arguments in favour of it have been drawn from the supposed success and efficiency of an alleged parallel jurisdiction in the Sheriffs’ courts of Scotland. The precedent, however, has been searchingly examined by our “Quarterly Law Magazine,” and the less that is said on that head the better for the discretion of those who could venture on calling into court such evidence. A better parallel might have been found in Ireland ; where those who best know what has resulted, testify that it would be far better for the country if debts were wholly irrecoverable.

If it be considered desirable to try the effect of having causes of an inferior amount tried nearer home, and before judges of a lower degree, there are means of making the experiment at small cost ; preserving all the advantages of the despatch, secrecy, and cheapness of the central conduct of interlocutory business. Let the experiment be tried of reviving the county courts, by somewhat extending their jurisdiction, and giving the sheriff a competent assessor. He might make progress through the principal towns two or three times in the year, at intervals between the assizes ; and, in addition to the records of his own court, he might receive and try such of the minor records of the upper courts as the parties chose to entrust to him. There would be no difficulty in fixing, from the first, a lower scale of official fees, in the upper courts, on actions for the recovery of small debts ; and these would form the class of actions in what the plaintiff was entitled to try before the sheriff’s assessor, when coming into the district where the parties or the witnesses lived. Any complaints as to what occurred at the trials could be summarily heard, at the smallest possible cost, by summons before a judge in town.

LETTER VI.

Nov. 1830.

In following up our view of the past, by an estimate of the probable future course and results of reform, I come next to its "Real Property" branch. We have seen that the Commissioners began by opening the whole ground in form, and showing more relish for theoretic than practical projects;—that Sir R. Peel fell in with their idea of doing nothing till their budget was complete; and that they were the first to find out that they were on the wrong scent, and to endeavour to get out of the train, which, when once announced and partially acted on, it would perhaps have been as well to have adhered to, in order that the public might have had before it a connected plan of operations.

The Commissioners are now most anxious to have the question of *General Registration* settled.† * * * *

If the decision be in favour of establishing registration, there arises a new field of discussion as to its plan and extent. The Commissioners' scheme of practical details seems ingenious and accurate. But as to their principles, one is rather surprised to see them shrinking from imposing registration as an essential to the formal validity of a deed, and refusing to treat the public register as *notice*, yet venturing to go so far as to give preference to a registered over an unregistered deed, of which the party possessing himself of the registration had full notice. As far as my acquaintance goes, practitioners, especially in the country, consider that there should be no middle course; that registration will owe its merit to its universality; that the moral wrong which will otherwise be frequently worked, will be more hideous than any ever known in the present system; and that the object never will or can be attained if the registry be not made imperative and essential.

To proceed to the other branches of real property reform. My own conviction is, that as regards *expence* in the ordinary routine of conveyancing, the direct and immediate savings likely to be effected will be less than may be popularly expected. In the casual, and certainly very vexatious, heads of expence—the fines and recoveries—the miserable waste about administrations, &c.

† The writer here enters into a discussion of some length on *Registration*, the policy or necessity of establishing which, in this country, he doubts. We have taken the liberty of omitting this argument, both because we differ from his conclusions, and because, before these sheets appear, the matter will probably have been fully canvassed and examined in parliament. We agree with him in one position, that, to carry the plan into full effect, ensure its adoption, and prevent fraud and mischief, registration must be made obligatory, and essential to the validity of the instrument.—Ed.

with regard to terms of years—and some other obvious nuisances of that sort, much will no doubt be lopped away. Shortening the period of limitation, and consequently the length of deduction of title, will also effect a good deal.

I will now enumerate a few among the practical points which I consider call for immediate attention; and which, being attended to, would, in my judgment, work nearly as much real good as can be expected. To these I would postpone for cooler consideration at our leisure, all the more speculative projects of the Commissioners.

1. The abolition of fines and recoveries (the latter of which, by-the-by, conveyancers could long ago, if they chose, have abolished for themselves, by a simple provision in every settlement).

2. Proper regulations as to passing married women's estates; and as to dower; which should attach to no lands but those of which the husband dies seised.

3. A public register and index of judgments, crown debts, &c. leaving them to expire of themselves, when of a given age, if not acted on by execution.

4. New and shortened periods of limitation of rights and actions.

5. Some new provision as to terms, and the representations thereto;—if they are to be tolerated at all, and cannot be got rid of by some new and effectual plan of making available charges on land.

6. The establishment of a good parochial or district register of births, marriages, and deaths.

7. Facilities for examining, and taking extracts of, all matters of record, without the enormous fees now exacted.

8. A repeal of the extra duties at present laid on feoffments, and bargain and sales; so as to enable small properties to be conveyed by simple and cheap assurances.

9. A repeal of the statute requiring bargains and sales to be enrolled; with provision for properly indexing such as *may* be enrolled; confining them to one court, and putting the fees for enrolling, and for copies, on a cheap footing.

Having thus assisted the *holders* of land, it will become equally proper to assist the enforcement of adverse rights against them, by—

10. An improvement in the means of enforcing executions summarily against real estates, and subjecting them in all cases to the payment of debts.

11. Improving and simplifying the remedies of a mortgagee; giving the Court of Chancery power to sell, and to grant execution for any balance still remaining due.

12. Arming the Court of Chancery generally with greater power in sales made under its direction ; and in particular making the execution of conveyances by the master a sufficient title to purchasers.

LETTER VII.

Jan. 1, 1831.

My task of correspondence would have closed by taking a short survey of the state, progress, and prospects of Chancery Reform ; but an interval has elapsed since my last letter, which gives a new character to the whole work. New actors are on the stage ; William the Fourth, after a few months' hesitation, has thrown himself upon the reformers, and their principles are now to have full course. While the results are still uncertain, however, and before we have time to discover what operation the change will have upon the immediate subject of these letters, I shall continue such observations as occur to me on that division of the subject which I had reached.

I have already observed, that the equity courts, in their progress towards reformation, are placed in a position of great disadvantage, by the striking difference in tone and principle, between the results of the Chancery commission and those of the two other boards. The former commission has given us no landmarks ; laid out no plans on which any reformer would be now satisfied to act. The public would hardly bear the expence or labour of a fresh inquiry ; and yet without it, or an effectual substitute, in the superintendence of some official department, nothing can be looked for but insulated measures, originating with the heads of the court, or with persons who, starting up as amateurs, are found willing to undertake particular projects of their own.

We have seen that, of late, Equity reform has been abandoned to the head of the court. In this work Lord Lyndhurst did next to nothing. Yet it is hardly fair to apply strong language to his mode of proceeding in an arduous task bequeathed to an inexperienced judge, in addition to the usual burthens of a post too heavy, under any circumstances, for common strength to bear.

The truth is, that the head of the court is not a fit person to select, as the originator, on his own responsibility, of effective reform, were it ever so much in his heart.

1. He generally comes from another branch of the profession ; and is placed nominally above judges much more conversant with the business than himself, and whose opinions, therefore, if different from his own, nullify his authority.

2. He is obliged to take a great deal,—as to *details*, every

thing,—upon trust from those who surround him, and who are all, more or less, interested in keeping things quiet. He is a sort of Lord Mayor, who has notoriously only a short lease of his splendour, and brief opportunities of knowing his office, or gracing it. Some of his principal officers, moreover, go and come with him, and therefore know as little as he does.

3. He is a politician, and a cabinet minister, necessarily treating his judicial character as secondary; and weighing all things, more or less, with relation to his position in the state. His measures, therefore, whether bad or good, are opposed or supported by rival political parties, with little reference to their merits.

4. He is himself, as a judicial officer, paid on a radically vicious plan. He is supported by fees, exacted for hindering justice as often as expediting it; of which fees he bears all the odium, though others gain far more by them than he does. If he is expected to be a reformer, the public should first give him freedom and character, by destroying this system.

5. It is always a delicate task for a judge to be busy in changes in the constitution of his own court. He is embarrassed by many difficulties arising out of his judicial character, his connexion with the bar, and other circumstances, which, if they really do *not* influence him, are believed to do so. His station also throws difficulties in the way of free discussion of his projects, where the arguers are all, more or less, dependant on him in their professional prospects.

What then is to be expected? Lord Brougham, if ever so well fitted by nature for the work of regeneration, will have a fair right (as he granted to Lord Lyndhurst) to claim some allowance of time for understanding his subject, if his is to be the moving power. Before he feels himself strong enough to grapple with the evils he perceives, another candidate for experience may succeed him.

Can effectual progress in measures requiring so much minute detail be expected from individual members of the legislature? Sir E. Sugden now speaks, and Mr. Spence has always spoken out plainly; but they are practising barristers, their time is fully occupied, and they must be subject to *their* influences as well as other people. I lay out of the question, that topics of this sort might just as well be discussed on the hustings of Covent Garden as in the English House of Commons; so that no individual can, without some powerful official support, carry through a measure introducing much detail. Such a body may, like our country rioters, break up the suitor's "thrashing machine," but would be just as incompetent to put it together again. The vice of the Court of Chancery does not lie in this or that particular department or movement, which can be remedied by the will of the legis-

lature declaring "this shall be," or "this shall not be." In *all* its practical details the machine is clumsy, complex, and ill-fashioned. The tone which its mode of working gives to every department is bad. It is like a great trading concern, carried on upon a slovenly unbusiness-like system. It requires well-conducted revision, from patient practical men, applied to each and every step of its procedure. Its forms are bad: it makes every movement sluggishly. To cure it, its practice must be re-written; and, at every step, the mode in which each workman does his part must be looked into and reformed.

I have probably the majority against me, but "minorities are often virtuous," and my honest conviction is, that if such a searching purification were applied to the court now before us as it is very capable of receiving, it would have far greater efficacy and far less impotencies than the courts of law either have, or are likely, under any circumstances, to have; that the quantum of business done, and to be done, would enormously increase; and that it would transact it with as much facility as any other tribunal, and with more complete success in the attainment of real justice to the suitor.

Much discussion has lately arisen about the necessity of strengthening the judicial power of the court; and I suppose that, considering the opposition given to Lord Lyndhurst's proposition for adding another judge, a contrary course must now, from a regard to consistency, be pursued. I am thoroughly convinced, that if the court were what it ought to be, the present force is *not* sufficient for the *proper* administration of the business which would be done there; and that assistance must be afforded, either by new judicial force, or by removing part of its business, as might be easily done, for instance as regards bankruptcy and lunacy, to the Equity side of the Exchequer, when effectually separated from the Plea side. That court has been nursed up by the legislature, and has a whole tribe of officers who are almost without any thing to do.

Several circumstances concurred towards a plausible and successful opposition to Lord Lyndhurst's new-judge plan of last session. He brought it forward unaccompanied (at least on an equal footing) by other measures, without which it looked like mere evasion. Again, the plan was very unpopular with the bar, who now manage (though in an exceedingly inconvenient manner) to ply backwards and forwards between four courts of equity; but who must have divided if a fifth had appeared; unless the courts were built on a radiating principle, with a central panopticon, where the practitioner could be deposited, and move to one or other court as called for.

In considering the judicial arrangements of the Court of

Chancery, one cannot help noticing the impolicy—looking at the interests of the suitors it is not too strong to say—the *fraud*, of making the administration of justice in this court subordinate to the political functions and qualifications of the judge. Whenever politics are in a shifting state, a perpetual harlequinade is going on;—unlike the dramatic movements, to be sure, in one thing, (but *nullum simile quatuor pedibus currit*), that at the end of the chapter persons and things do *not* return to their original condition, for each actor quits the scene and the public pays his pension. Nothing can be more absurd than that a host of conflicting cares and duties should distract the judge's mind, while political aptitude is often made his qualification, with just as much reason as Bishop Williams had for resting *his* claims upon his intimacy with Hebrew. Can it be expected that the suitor should be well pleased to have a question regarding, perhaps, all he has in the world, made the hornbook of a novice?

The late change in administration has placed this evil in open day-light. Sir Anthony Hart, an excellent chancellor of Ireland, was avowedly removed *because* he *was* a lawyer and not a politician. The minister declared that it was inconvenient not to have a political confidant in the office. The suitors may think that mischief to their interests ought to outbalance such an inconvenience, but Littleton may tell them that “la ley voet plus tost suffer un mischiefe que un inconvenience.” The subordinate officers are similarly affected. A parliamentary complaint was made as to the appointment of persons not considered to be the best qualified. Lord Brougham was obliged to confess the fact, but asked how was he to find persons most competent to the duties, who would undertake them on such a tenure of office?

There is only one common sense movement; and if Lord Lyndhurst, in his plan of appointing a fourth judge, was aiming at it, he was doing well. The Lord Chancellor must *leave the court*, and be as much a stranger to it as the Chancellor of the Exchequer. In his place there should be another Vice Chancellor;—I should say *two*, for I am convinced that important causes should be tried by a bench;—and the basis should be laid out for an efficient court of appeal from Chancery and the Exchequer, in which the Lord Chancellor might be the official or nominal president.

At any rate, one or two inferior judges of the court could be amply employed in despatching on summons much of the interlocutory business of the court, and in conducting some improved plan for taking evidence.

The proceedings of parliament, since its meeting in November, have given no earnest of connected movement. If there were men enough in the House of Commons who were adequate to the task, and who would be above squaring their motions by their poli-

tical interests, the present would be a most auspicious time for forming an active committee to organize some connected scheme; especially as several branches of the subject, such as those of pleading and evidence, are as yet quite untouched, and require much patient consideration. Two nights have been devoted to a debate on the subject, ending in nothing. Sir E. Sugden, now in opposition, opens by a long exposure of all the abuses, about which, when in office, he (being under orders) said nothing, and seems to be announcing something very original. Mr. M. A. Taylor receives the convert; but says, very truly, that he himself has been preaching the same sermon half his life. Mr. Williams who, with the late administration, supported the additional judge's bill, now contends for abolishing the court altogether. Mr. Spence makes a good practical speech, which is only objectionable because spoken on an occasion when it can do no good. Mr. Campbell (the head of the "Real Property" Commission) contends that the best chancellors must be common lawyers,—or men who know nothing of Chancery business; and after two nights' discussion of this sort, the matter is going over to a third, when a member of the government evinces their concern about the matter by counting out the House.

The genuine reformer of the Court of Chancery must start with a provision (like Sir Robert Peel's as to the other courts), for taking into the Treasury, or to the Dead Fund, all the fees now received—paying the present officers a proper remuneration—giving the Lord Chancellor a salary—remodelling the scale of payment for work actually done in the offices, and abolishing all other demands as so much plunder. You have no conception what the reduction would amount to, after paying every one liberally. At present it seems to be held beneath the dignity of the court, to leave its lowest functionary without a handsome establishment—"The very humps of its dwarfs are impressed with dignity," of that sort at least. None of its subalterns work for less than luxurious incomes, derived from what they call "reasonable" fees—reasonable in Lord Coke's sense of reason, which "is not to be understood of every unlearned man's reason, but of artificial and legal reason."

The ground would then be laid for real reform in the court; and whatever be the ultimate development of the details, the following measures at least are absolutely necessary. They are not difficult to accomplish, and without the greater part of them, any patchings up are and must be nugatory.

1. The abolition of the patent places, and the performance of the duties of all offices by the actual holders.

2. The reduction of fees to a standard proportioned to what is necessary for the fair maintenance of the offices.

3. The establishment of an office for sealing all writs by stamp, on presentment to the officer for that purpose; such writs to be shortened and simplified in form:

4. The abolition of the Six Clerks, and conversion of their office and the Report Office into one general office of record.

5. The abolition of recitals in decrees and orders.

6. An arrangement for the cheap and summary disposal of interlocutory matters of practice before a judge on summons.

7. An improvement in the mode of taking evidence; I should suggest that it should be taken *vivâ voce* before examining judges, who should also transact the interlocutory business of the court on summons.

8. The abolition of "copy money," and other burdensome fees in the masters' offices; with some arrangement for the more efficient performance of that part of the court's business.

9. The appointment of taxing masters; and perhaps of two or three accountants of the court, to whom mercantile accounts could be committed.

10. A more summary jurisdiction in cases of legacies.

11. Arming the court with suitable writs for the enforcement of its decrees.

12. A revision, digest, and amendment of all the orders of the court, so as to form a convenient code of practice.

A great deal of this *you* have got through (though, observe, your New York Chancery reform is very far from what it should be) in a fifth of the time, and probably at a twentieth part of the expence, it has cost us to talk about it; what we shall *do* in this stirring season remains to be seen.

LETTER VIII.

January, 1832.

Truly the "Sailor King" bids fair to rank in history as the British Justinian, at least, if laws are to be measured by quantity. A year has elapsed since the date of my last letter to you; but during that year I have had no breathing time, no resting point on which to stand and review, for your information, what has passed, or to anticipate what is to come. The first session of a refractory parliament has sat, and it has been its last. Within the same year has begun and ended the first session of our king's second parliament, elected in the full vigour of reform; and while I write the houses have adjourned, after commencing their second campaign. What a season, you will exclaim, for real progress in the cause of legal reformation! Mr. Brougham is, and for more

than a year has been, Lord Brougham, Lord High Chancellor of England! *Nous verrons.*

The first questions you would of course ask would be, "Have the *mode* and *spirit* of your proceedings in the good work been improved?" "Have the law officers of the crown, under a reforming administration, been instructed to attend to the subject—to lay regularly before parliament the propositions of the boards of inquiry?"—For the expences of these boards, by-the-by, I see no less than 39,000*l.* voted this year, at the instance of the Chancellor of the Exchequer.—"Have those in the administration, to whose care such matters would naturally fall, superseded the former scheme of discordant and heterogeneous law-patching, not only by interposing their advice, but by setting a better example of forming and pursuing a connected plan of operations?" To these questions the answer at present is in the negative. The present Attorney and Solicitor-general trouble themselves far less about the matter than those who went before them; and their superiors appear to follow the old system of each riding, and letting every one else ride, his own particular hobby, his own road and his own pace.

In the first session (which lasted five months, from November, 1830, to April, 1831) we had, as usual, many projects, but made little way. The bills moved were, with their results, as follows:

1. A bill was quickly passed to amend Sir James Scarlett's act of last session.

2, 3. Sir E. Sugden brought in two bills, the one for amending the statute of frauds, the other as to the attestation of instruments; both were pending at the dissolution in April.

4, 5. Lord Wynford had also pending at the same period, a bill to carry some of the Commissioners' alterations much farther than they proposed; and another bill, of a very honest character, for making absentee landowners pay their debts.

6 to 11. Lord Tenterden, during this and next session, has assumed the practical task of carrying into effect such of the propositions of the Commissioners *as he approves*. His lordship is a *very* moderate reformer; things will go but little way if they move no farther than *he* will carry them; but it is pleasing to see *any thing done*, and done, too, in a business-like manner.

The three of his bills which passed were unquestionably good.—They are,

1. For power to examine witnesses abroad, or otherwise incapable of attendance at the trial.

2. For amending the practice in *mandamus* and *prohibition*.

3. The rejected measure of last session, for giving judgment in ordinary cases immediately on verdict.

His three bills which fell at the dissolution were,

4. The very questionable proposition of enabling a judge to compel reference to an irresponsible individual of his nomination, if the parties cannot agree.

5. A bill for giving the courts of law power in "interpleader" cases.

6. A bill for altering the law of prescription and limitation.

12 to 17. Mr. Campbell, as head and parliamentary representative of the "Real Property" Commission, but on his own responsibility (the government keeping clear of committing themselves, even in opinion), introduced six bills, which "came like shadows—so departed."

1. A general registration bill.

2. A bill to amend the law of dower.

3. A bill to amend the law of curtesy.

4. A bill to amend the law of inheritance and descent.

5. A bill to amend the law of prescription and limitation of actions (pending of course at the same time with Lord Tenterden's different proposition in the Lords').

6. A bill to abolish "fines and recoveries."

18. Lord Eldon had a bill for "amending the bankrupt laws." What it was and what became of it, I do not trace. Let us hope it was intended to remove the scandalous job perpetrated by his former bankrupt *amendment* act; which rendered it necessary to have two barristers attending all meetings under country commissions, and moreover doubled the fees of each; a real grievance and imposition, which Lord Brougham has since left as he found it.

19 to 22. Lord Brougham produced four bills, which found the five months too short for their passage.

1. His local courts' bill;—not since heard of.

2. His bankruptcy court bill.

3. A bill as to the registrars' and masters' offices.

4. A bill to carry into effect some provisions planned by

Lord Lyndhurst as to lunatics' estates.

23. A bill by Mr. Freshfield (a solicitor) for amending the bankrupt laws shared the fate of the majority.

While this was going on, the rival legislature, created by Sir James Scarlett's act (which enabled eight judges to bind all the courts) began to take upon itself the dealing, as far as its authority enabled it, with insulated points. The power was primarily intended to enable the judges to reduce the discordant practice of the three courts to uniformity. I before remarked that it would have, perhaps, been wiser that the legislature should itself, with the advice of the Commissioners, have first settled the basis. The first use made by the judges of their power has been to *originate* plans of *reform* of their own; and accordingly a series of rules was

issued in the summer, taking up and modifying portions of the Commissioners' suggestions. The result was to alter the practice in "bail," and some other details, and to curtail the forms of "declaration" in ordinary actions.

It is good to see the judges disposed to improve the practice of their courts; and improvement, it certainly is, to simplify and shorten pleadings. Yet a reformer may be excused if he doubts whether this be the right way to deal with the subject. Independently of the annoyance to practitioners, occasioned by a continuing series of detached innovations, any such regulations must, without parliamentary assistance, be necessarily very incomplete; nay, they are often of dubious tendency,—sometimes positively injurious,—when unconnected with other measures, out of which, in fact, they arise, and without which their efficacy must at least be limited.

Take an instance; the Commissioners contemplated a bill (which, in fact, has been long drawn, though no one has attended to its progress) for simplifying and rendering uniform all the present varieties of initiatory "process," and providing also for relieving suitors from many of the restrictions and hindrances in the way of justice, imposed by the "terms." Assuming this done, it naturally followed, that the plaintiff being no longer obliged to hasten forwards so fast, a defendant might be indulged with some *locus penitentiæ*—some interval between the service of process upon him and "declaration"—so as to prevent proceedings being precipitated to increase costs.

In framing their new rules the judges seized on the last idea, and required all plaintiffs, under all circumstances, to wait six days between "service" and "declaration," not even allowing a party to proceed at his own risk of costs. So that (there being no concurrent relaxation of the restraints of term) every plaintiff's position is, for the protection of some defendants from occasional vexation, enormously deteriorated. In distant parts of the country he, in short, loses one-third of the term, already inconveniently short.

Again, as to the shortening of pleadings; the Commissioners proposed to accomplish this as part of a new system of pleading, having for its object to cut off much useless evidence, by putting in issue something like the real point in dispute. As abbreviating the forms would render necessary a new standard of remuneration to practitioners, (they being at present paid on a most impolitic scale, that of length), and as the alteration in the substance of pleadings would vary the stages in which certain responsible duties would have to be discharged, the Commissioners meant to remodel the whole system of costs, and to adopt one applicable to the new state of things. The judges meantime seize on the mere pro-

position of shortening declarations, dropping all attempt (perhaps from want of authority) to reform the general scheme of pleading, and taking no notice at all of the subject of costs. A new scale of the latter is of course in preparation. But it will be one which must be again altered hereafter; because the views of the Commissioners, on which they would frame the eventual standard, do not apply to the present change; which merely substitutes one number of words for another, and has no relation to ulterior and more important objects.

The opening of the Court of Exchequer has operated very little in relief of the Court of King's Bench, or towards an equal distribution of business. From the want of coteremporaneous reform in the Common Pleas, the Exchequer has gained at the expence of that court, which rather wanted business, than had it to spare; and, moreover, the efficiency of the Court of Exchequer, both in its equity and common law branches, is impaired by the want of effectual separation of the two departments. Nothing can be more absurd, than that it should have one over-worked judge, and four men of leisure.

LETTER IX.

January, 1832.

A second parliament having been called, its first session lasted four months—from June to October; and once more the mushroom tribe thrust forth their heads, as follows:

1, 2. Sir Edward Sugden is early at his post and produces his bills of last session; but again they are unable to make their way.

3, 4. Lord Wynford's two bills are also in the field; the one directed towards compelling absentee landowners to pay their debts, was successfully opposed by the Whig Chancellor of Ireland. The other bill was pending at the session's close.

4 to 6. Lord Tenterden brought forward his three dropped bills of last session: of these the "Interpleader" bill (an excellent measure) is now passed.

7 to 12. Mr. Campbell opened his budget of six bills; with the same success as before.

13. Mr. Freshfield also again failed with his bill.

14. An act passed, amending Sir R. Peel's "Fees bill."

15. Lord Brougham moved, I think, through one stage towards the end of the session, a bill of reform in some of the Chancery offices, of which nothing more has been heard.

16. He succeeded in passing his "Bankruptcy Court bill."

The mode in which this bill found its way into the statute-book, is, independent of any question of merits, very illustrative

of our mode of proceeding. From the beginning of July to the end of September it was pending or sleeping in the Lords; till at length the House of Commons had about a fortnight allowed it, in autumn (at a period when the House never sits, and never would have sat, but for the extraordinary occasion of the reform bill), to proceed *de die in diem*, parliament being kept together for the purpose; the ministry obviously exerting all its strength to carry it, as it became an important point not to lose such a measure of their own, after their defeat on the reform bill; and the country, open-mouthed at any arguments, bad or good, which emanated from the only persons likely to discuss the measure, because they came from the ranks of those who had opposed the great project of reform. Was it likely that a bill of this sort could, under such circumstances, be fitly discussed on its own merits? But it seems fated, that even such subjects as the improvement of the administration of justice must either be neglected, or canvassed amidst the halloos of contending parties. So high was the excitement carried, that the Lord Chancellor did not scruple to reply, nightly, in his place, to the arguments of the preceding evening in the other house; all this operating of course so fiercely through the newspapers, that I verily believe many fancied the bankruptcy bill as vital as Lord John Russell's.

As to the bill itself, which was so needlessly made the subject of all this precipitancy, and of which I send you a copy that you may judge for yourself, I do not feel inclination to say much. Though a ricketty bantling, at present the wonder of Westminster Hall, its parentage entitles it to respect. While we may lament that so much energy was not exerted to better purpose, we cannot dispute that the motives which originated it were good. The reformer laments to see the time in which so much good might be done, passing away in such projects, and justly fears that they will bring discredit and distrust upon better measures. Should the present administration unfortunately be unseated, I cannot help thinking that those among it who take an interest in the subjects of the last five years' inquiries and discussions, will have something to answer for in neglecting the golden opportunity. What do we gain by Lord Brougham's extended means of usefulness, if he employs them only to emulate Lord Wynford in trying to rear up showy superstructures of his own, on foundations which both profess to laud, and both omit to give any assistance in laying?

There is no doubt that our late system of town administration of the bankrupt law, as carried on by seventy commissioners, had become justly obnoxious to public reprobation, as not only inconvenient in itself, but as leading to impunity for other abuses. It is equally clear that the grand mischief might have been remedied, at a great saving too to the public, by the reduction of

the body to a smaller number, permanently sitting, and armed with more authority as members of a court; taking good heed, however, not to increase expence, and defeat justice, by requiring or encouraging too strict forms of proceeding, so as to convert what is primarily an instrument for the amicable division of assets into an arena for litigation. It was also good to abolish the huge patent places connected with this or any other department of the law; and to make every practicable reduction in the expence and machinery of practice. It *might* have been afterwards considered whether a separate judge of weight and experience should or should not be assigned to transact the judicial business, instead of committing it to the Vice Chancellor. But all that really goes to the redress of the prominent mischiefs, is perfectly distinct from the creation of four judges, ten registrars, and thirty official assignees; at a cost absorbing all the gain derivable from the other reductions.

As to these four judges, the wonder is, what they can find to do. And why should there be four?—four second or third-rate judges instead of one good one (if *one* was necessary), on the principle apparently of four black rabbits making one black horse! It was said that they were a Court of *Review*; a Court of *Appeal*: and that courts of appeal should have more than one judge. I think so too, and that nothing is more wanted than a real bench of appeal from the equity courts, which might include the real appeals in bankruptcy. But the word is here a misnomer; the judge in bankruptcy has not one case in ten which is a case of *appeal*. His is an original jurisdiction: and for most of their business, therefore, the new judges will be a *primary* court, with appeal to the very tribunal deprecated; namely, to one *judge*, the Lord Chancellor. At this moment the state of business in the Court of Chancery renders any precipitate plan of removal of part of its burthen less necessary than ever; and one is surprised to see a project for relieving it of a few weeks' work in the year by the creation of *four* judges, patronized by the very parties who exclaimed loudest against Lord Lyndhurst's project of one additional judge to share all the work. A large proportion of the bankrupt petitions, moreover, are either matters almost of course, or of so easy a character, that one judge of the most ordinary capacity can readily dispatch them.

And why, it may be asked, should this vast machine have been created (the second now in operation in the metropolis alone, for we have an "Insolvent Court," which ought to be at work on the same matter), for the administration of only a portion of one department of the insolvent law of this country—that branch of the law which requires more consideration than any other, and which must soon receive it? In fact, it appears that the Common

Law Commissioners were, at the very moment, considering the whole system, and endeavouring to mould a cheaper, more equal, and just plan, of rendering debtors' estates available.

The second session of the present parliament commenced in November, and, as yet, all that has been announced is the "Real Property" budget of the two preceding sessions. The opposition to the registration bill clearly gains ground, as I expected it would; and I fear that its promoters will find that in trying to administer too strong food, they have lost opportunities for carrying less ambitious measures. Mr. Campbell's tactics have not improved his chance of success. He has been much too fond of attributing unworthy motives to all practitioners who differ from him, when a little inquiry would have shown that none have been more active in other plans of reform by which they will lose much more. The administration, who have so long had before them the report on which this measure is founded, have not yet declared their views on the subject. The bill may probably reach a select committee—and there we shall witness one of the anomalies of British legislation. Committees sit in the *morning*, when lawyers have something to do which suits their interests better than to attend; and the discussion must therefore be given up to those who can know nothing about it.

We hear nothing now of any plans as to the reform of the Court of Chancery. This is rather surprising, considering that the Chancellor, and his brother (now one of the masters), must have incessantly before them some of its worst abuses. After all that has been said, the system remains precisely as it was in 1825. The judicial business of the court is, however, in a much lighter state. The Chancellor's vast energies and powers of endurance have worked through the dense mass of his "paper," and the arrears are nearly all disposed of. As, even in the worst times, arrears did not materially vary in their average amount, there is no reason why (after removing the current stock of a year or two's consumption, which used to be kept in hand) the court should not regularly keep down its business as it arises, and devote more attention than has usually been afforded to doing it *satisfactorily*.

There is, however, clearly, no superfluous judicial force; and if a *bench* were to be constituted (as some think it highly desirable there should), for hearing certain classes of business, *more* judges might still be wanted. Accidental circumstances contribute somewhat to the present state of the business. The Lord Chancellor, like other new chancellors, began by discouraging "motions." These used, before such a practised equity judge as Lord Eldon, to absorb great portion of his time, and often very beneficially. The present Vice Chancellor's judicial character, also, is not such as to promote this class of business in *his* department.

Meantime, the increased judicial despatch and the sitting of the Master of the Rolls in the morning, which renders it necessary that three registrars should be constantly all day in court, have made the delays in *their* offices worse than ever.

I ought, perhaps, to notice the additional difficulties which the subject of patronage throws in the way of reform, especially when that reform is conducted by the dispenser of it. If a less monopolizing system could be devised than that which entrusts it all to one individual, many practical objections to sundry reforms would be removed. New institutions require new officers. The appointment must be somewhere; and on the one hand the reformer hesitates about increasing the overgrown influence of the political head of the law, and on the other he cannot feel satisfied at letting such distrust (which the anti-reformers take care to foster) operate to defeat obvious plans of improvement.

Thus stand the progress and prospects of legal renovation under our Whig administration. I should have observed, however, that during these parliamentary campaigns, a third report has issued from the Common Law Commissioners. It is eminently practical in its character, as being directed towards several topics which are of considerable importance, though of less ambitious pretensions than the projects of which the world hears more. When we ask why the law officers of the crown do not take care that such suggestions are properly brought at once before parliament, before they are forgotten, or before Lord Tenterden, as a legislator, or the fifteen judges, in their corporate character, have castrated them, I know that the plea will be (and a very common one it has become), that the pendency of some one great measure absorbs attention, and must excuse the neglect of everything else. This year it has been the Reform Bill—next year it will be something else. The excuse, if it be founded on truth, would only show that the legislative apparatus of this country is in a sadly deranged state. Why should attention to one matter of business incapacitate men of sense from attending to their other concerns? or why should they not divide their labour? The truth is, that every minister rubs on as well as he can; pushing forward what is essential to himself, or what his government has committed itself to; and getting rid of every thing else in the best way he can. He finds the House of Commons unwieldy in its number; active only under strong excitement; totally unfit for the consideration of many of the subjects before it, and yet submitting itself to no system of advice or arrangement. Laws passed under such circumstances *may* be good, but are more likely to be bad; and are certain to be very imperfect. Indeed, it would seem that the more showy and equivocal a project is, the more it is trumpeted forth by the press, which, after all, so little understands the subjects of its

eloquence, that almost every speech reported on these topics becomes unintelligible nonsense;—the more confidently do some of our complacent well-meaning politicians in the house extol it as the one thing needful;—the more vehemently do its patrons denounce all demur or opposition to it as selfish and interested.

Farewell. Give us your good wishes. You will, I know, rejoice as much as I shall do if my prognostications turn out to have been too gloomy.

Believe me, yours, &c.

J. W. D.

P.S.—While closing this long letter, a fresh importation of judges' rules has reached me. They comprise more than 100 regulations for the assimilation of the present practice in the three courts, and a few minor innovations. One of the latter is directed to remedying the blunder in the last code of rules, by which, as I before observed, the evils of "Terms" was increased by the adoption of *part* of a plan of *alleviation*. The plaintiff is now to be allowed in return four days *after* the two issuable terms to "declare" in. By reform, therefore, he now loses only *two* days in these two Terms; in the others he will still lose *six*. The principal other innovations go to deprive a party of his costs of proving an instrument *set out on the record*, unless he has previously called for and been refused an admission. This is a narrow corner of one of the Commissioners' plans. No relief is provided for the old abuse of *remanet fees*.

I continue of opinion that this patching system is altogether ineffectual, and for the most part mischievous. If we are to consider its adoption as notice to us that the Commissioners' plans are not to be carried into effect at all; or at least that the judges have attained that conviction from duly estimating the character of the government and its law officers, the discovery is a mortifying one, and we must draw the best consolation we can from Lord Tenterden's cautious bits of legislation and the judges' tender appliances. But if there be any chance of an *honest* termination of the labour on which the country is still expending thousands (which are, to say the least of it, improvidently applied, if it be fixed that nothing is to come from them), then I must assert that it is childish and useless to annoy practitioners and the public by continually emitting little schemes of assimilation and regulation, in matters, most of which must be wholly recast if real good is to be done;—schemes which "want the essential requisites of head and tail"—of well arranged purpose, or final adaptation.

ART. V.—THE BARRISTER.*—No. 2.

SECTION II.

HIS DUTY TO HIS CLIENT.

1. In considering his duty to his client, he reflects upon the propriety of his acting; upon the person for whom he should act; and his mode of acting.

2. *He considers the principle upon which the profession of an advocate is founded.*—From our tendency to err, the utmost caution is requisite in the discovery of truth, both in the natural and moral world. "If," says Lord Bacon, "you infer that the rays of celestial bodies are hot, because the rays of the sun excite heat, remember that the rays of the moon are cold. If you infer that the blood of animals is warm, because human blood is warm, remember that the blood of fish is cold. Examine, therefore, before you decide. Try all things; weigh all things. When the different sons of Jesse were brought before Samuel in the house, he asked for David, who was absent in the field."

If this caution ought, in general, to be observed in the discovery of truth, what vigilance must be requisite when deciding upon human conduct? Who can tell all the windings and turnings, all the hollownesses and dark corners of the mind? It is a wilderness in which a man may wander more than forty years, and through which few have passed to the promised land. Wisdom, therefore, is always anxious to assist its own judgment by the opinions of others: "Lord Bacon lit his torch at every man's candle."

Requisite as caution is, in forming a correct judgment upon human conduct in general, what difficulties attend the discovery of truth in a court of justice, amidst a conflict of passions endeavouring to mislead, and where sensibility is often least able to do justice to itself. When the general feeling of the public respecting the dilatoriness of the Chancellor D'Aguessau was respectfully communicated to him by his son, "My child," said the Chancellor, "when you shall have read what I have read, seen what I have seen, and heard what I have heard, you will feel that if on any subject you know much, there may be also much that you do not know; and that something even of that you know may not, at the moment, be in your recollection. You will then, too, be sensible of the mischievous and often ruinous consequences of even a small error in a decision, and conscience, I trust, will then make you as

* Continued from vol. ii. p. 367.

doubtful, as timid, and consequently as dilatory, as I am accused of being." To aid the judge, therefore, in eliciting the truth, it has been deemed expedient, except when the life of a fellow creature is at stake, that he should hear the opposite statements of experienced men, who, in a public assembly, may be more able than the suitors to do justice to the causes upon which their interests depend.

3. *He examines the reasons in favour and in opposition to this principle.*—That the judge should be assisted by hearing every reason which can be urged, appears indisputable. If a judge is called upon to decide on any doubtful question, in chemistry, for instance, would it not be desirable that he should hear the conflicting sentiments of the same chemist, or of two eminent chemists? Or in a doubtful question of insanity, to hear the opposite sentiments of the same physician, or of two eminent physicians? Opposite statements by the same individual is the process in our own minds, and to which, after having heard all and weighed all, we are obliged to resort; and it is a process not unknown in former times. When Alexander was feasting one night where Calisthenes was at the table, it was moved by some after supper, for entertainment sake, that Calisthenes, who was an eloquent man, might speak of some theme or purpose, at his own choice: which Calisthenes did; choosing the praise of the Macedonian nation for his discourse, and performing the same with so good manner, as the hearers were much ravished: whereupon Alexander, nothing pleased, said, "It was easy to be eloquent upon so good a subject." "But," saith he, "turn your style, and let us hear what you can say against us:" which Calisthenes presently undertook, and did with that sting and life, that Alexander interrupted him, and said, "The goodness of the cause made him eloquent before, and despite made him eloquent again."

In the Harleian MSS., in the British Museum, it is said that Elizabeth, Queen of England, was a princess most entirely beloved of the people, for during her government pure justice and mercy did overflow in all courts of judicature. "And in this peerless Queen's reign it is reported that there was but one Serjeant at Law at the Common Pleas bar (called Serjeant Benlowes) who was ordered to plead both for the plaintiff and defendant, for which he was to take of each party ten groats only and no more; and to manifest his impartial dealing to both parties, he was therefore to wear a party-coloured gown, and to have a black cap on his head, of impartial justice, and under it a white linen coiffe, of innocence."

The statements by opposite advocates may not be most beneficial to the practitioner; and, as the advocate may profess feelings

which he does not feel, and may support a cause which he knows to be wrong; as it is a species of acting without an avowal that it is acting, it may appear at variance with some of our best feelings. It is, however, nothing but appearance. The advocate is in reality an officer assisting in the administration of justice, and acting under the impression that truth is elicited and difficulties disentangled by the opposite statements of able men. He is only troubling the waters, that they may exert their virtues.

4. *Satisfied with the principle upon which the profession of an advocate is founded, he enters on his duties.*

5. *He does not mix himself with the client or the cause, with the slanderer, the adulterer, the murderer, or the traitor, whom it may be his duty to defend. He lends his exertions to all; himself to none.*

6 *The result of the cause, except as far as he has an opinion of right, independent of the parties, is to him a matter of indifference. It is for the court to decide: it is for him to argue.*

7. *In general he does not exercise any discretion as to the suitor for whom he is to plead.*—If a barrister were permitted to exercise any discretion as to the client for whom he will plead, the course of justice would be interrupted by prejudice to the suitor, and the exclusion of integrity from the profession. The suitor would be prejudiced in proportion to the respectability of the advocate who had shrunk from his defence, and the weight of character of the counsel would be evidence in the cause. Integrity would be excluded from the profession, as the counsel would necessarily be associated with the cause of his client.

“From the moment,” says Erskine, in his defence of Thomas Paine, “that any advocate can be permitted to say that he will or will not stand between the crown and the subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end.

“If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of, perhaps a mistaken opinion, into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel.”

Our advocate, therefore, does not exercise any discretion; to him it is a matter of indifference, whether he appears for the most unfortunate, or the most prosperous member of the community; for the poorest bankrupt, or the noblest peer of the realm; for a traitor, or for the King.

8. *In some extreme cases he declines to act as advocate when the appearance of opposition is in violation of some of our best feelings.*—He will not, like *Lucius*, proceed in judgment against his own sons.

“*Infelix, utrumque ferent ex fata minores.*”

In these cases, before he acts or declines to act, he duly weighs his relative duties.

9. *He does not exercise any discretion, from his opinion of the goodness or badness of the cause.*—Burnet, in his *Life of Sir Matthew Hale*, says, “If he saw a cause was unjust, he for a great while would not meddle further in it, but to give his advice that it was so. If the parties after that would go on, they were to seek another counsellor, for he would assist none in acts of injustice. If he found the cause doubtful or weak in point of law, he always advised his clients to agree their business. Yet afterwards he abated much of the scrupulosity he had about causes that appeared at first view unjust, upon this occasion: there were two causes brought to him, which by the ignorance of the party, or their attorney, were so ill represented to him, that they seemed to be very bad, but he, inquiring more narrowly into them, found they were really very good and just. So after this he slackened much of his former strictness, of refusing to meddle in causes upon the ill circumstances that appeared in them at first.”

“But what do you think,” said Mr. Boswell to Dr. Johnson, “of supporting a cause which you know to be bad?” Johnson: “Sir, you do not know it to be good or bad till the judge determines it. I have said that you are to state facts fairly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, sir, that is not enough. An argument which does not convince yourself, may convince the judge to whom you urge it; and, if it does not convince him, why, then, sir, you are wrong, and he is right. It is his business to judge; and, you are not to be confident in your opinion that a cause is bad, but to say all you can for your client, and then hear the judge’s opinion.”

10. *He acts for the party by whom he is retained, as long as his services are required, and no longer; and, when no longer required, he may plead for his opponent.*—In the case of Mr. Shelly, argued in the Court of Chancery, a few years ago, all the King’s counsel were retained against Mr. Shelly. In a cause, some years since, at Carlisle, between a peer and three orphan children of his steward, the peer retained every counsel at the bar;

and he succeeded in retaining the property till his death, when it was returned with interest and costs by his noble successor. Our advocate knows that opulence does not possess this power to oppress its opponent, by sending one brief to a counsel at the commencement of a suit, and then rejecting him.

11. *He is ever ready to defend the accused* ; particularly if the accusation is a pretext to violate the rights and liberties of his countrymen. If in the triumphant establishment of unwelcome innocence, he provokes the powerful, he secures what is far better—his own approbation, and the love and respect of the virtuous. If ever the praises of mankind are sweet, “if it is ever allowable to a christian to breathe the incense of popular favour, it is” says an eloquent divine, “when the honest, temperate, unyielding advocate, who has protected innocence from the grasp of power, is followed from the hall of judgment by the prayers and blessings of a grateful people.”

12. *He is cautious in listening to the complaints of poverty*, knowing that true charity opens its eyes before it raises its hand ; but when convinced that justice requires his exertions, he readily assists those who are unable to assist themselves, always with his time, his talents, and attention, and, when necessary, with his purse.

13. *He is anxious to prevent or terminate litigation.*—There are more differences settled in his chamber than in Westminster Hall. Where the contest is a bubble blown up by malice, he endeavours to disperse it. He makes not a Trojan siege of a suit, but seeks to bring it to a set battle in a speedy trial.

14. *Before he enters the field he surveys his forces* ; which consist of his knowledge ; his integrity ; his proper estimate of worldly power ; his liberty of speech ; the succour and sanctuary of a free press ; and public sympathy. He knows that the administration of justice mainly depends upon the ability and the integrity of the bar. Who, in times when our liberties are threatened, when power is attempting to extend its influence ; who but men of ability can be expected to resist these invasions ? Is it to be expected that the herd who follow any body that whistles to them, or drives them to pasture, will have the honesty and courage, upon such occasions, to despise all personal considerations, and to think of no consequences but what may result to the public from the faithful discharge of their sacred trust ?

15. *He is diligent in discovering the merits of his client's case.*—He remembers the old adage, “They who are quick in searching, seldom search to the quick.”

16. *If the cause be difficult, his diligence is the greater to find it out.*—If a leading case be out of his practice, he will take pains

to trace it through the books, and prick the footsteps thereof, wheresoever he finds it.

17. *He never intentionally misstates either facts or law.*—“Sir Matthew Hale abhorred,” says Burnet, “these two common faults of mis-reciting evidence, quoting precedents or books falsely, or asserting things confidently, by which ignorant juries or weak judges are too often wrought on. He pleaded with the same sincerity that he used in the other parts of his life.”

18. *He exerts his power to strengthen his own case, and to weaken his opponent's, because he knows that, taking all things into consideration, justice is best promoted by collision of intellect, and that the whole truth will be eviscerated by the opposite counsel, or that the intelligence which presides will not permit truth to be misrepresented by any partial examination. We do not say, “What is truth?” and go out immediately.*

19. *If he is obliged to arraign the acts of those in high station, he approaches them with the simplicity but with the courage of truth, who is fabled to be white robed, because she can have no stain or tinge of malice.*

20. *He is strenuous in the cause of his client:* and, regardless of every obstacle, goes right onward in his course. The hard-minded and mistaken Jefferies, said to Mr. Wallop, on Baxter's trial, “I observe you are in all these dirty causes, and were it not for you gentlemen of the long robe, who should have more wit and honesty than to uphold these factious knaves by the chin, we should not be at the pass we are at.” Similar language disgraced the bench on the trial of the seven bishops; but Mr. Hale and Mr. Somers were not likely to be deterred by such conduct from the discharge of their duties.

21. *In the discharge of his duty, he knows no fear.*—When Sir Matthew Hale, in the case of Lord Craven, pleaded so forcibly for his client, that in those miserable times, he was threatened by the then Attorney General with the vengeance of the government, “I am pleading,” he replied, “in defence of those laws which the parliament have declared they will maintain and preserve; I am doing my duty to my client, and I am not to be daunted.”

So our advocate has always the honesty and courage to despise all personal considerations, and not to think of any consequence but what may result to the public from the faithful discharge of his sacred trust.

(To be continued.)

ART. VI.—MEMOIR OF AUBREY GENTILI.

Isaac Walton, in his life of Sir Henry Wotton, relates,* that “about the twentieth year of his age he proceeded Master of Arts; and at that time read in Latin three lectures *de oculo*,” “these,” adds he,† “were so exactly debated and so rhetorically heightened, as among other admirers caused that learned Italian, Albericus Gentilis, then professor of the civil law in Oxford, to call him *Henrice mi Ocelle*; which dear expression of his was also used by divers of Sir Henry’s dearest friends, and by many other persons of note during his stay in the university.” A few particulars relating to the life and character of “that learned Italian” may not be altogether destitute of interest.

Aubrey (or Alberico) Gentili was the eldest of seven children of Matthew Gentili, a physician descended from an ancient and noble family in the March of Ancona. He was born at Castello de Sangenesio, in the year 1550. At the age of twenty-one he took his degree of doctor of laws at Perugia, and shortly afterwards was made a judge in the city of Ascoli. His father, from motives of religion, quitted his country, and retired into Carniola; and there, for a time, not only entertained his own reformed opinions unmolested, but had the good fortune to be appointed chief physician to the province, with a competent salary.‡ Aubrey, who felt the same scruples on points of faith, honourably gave up his appointment at Ascoli, and became a voluntary exile. But instead of establishing himself in Germany with the rest of his relations, he preferred trying the experiment of a visit to England. At first he took up his quarters in London, and here he soon gained the favour and patronage of Lord Leicester and Sir Francis Walsingham. Lord Leicester, who was at that time Chancellor of Oxford, gave him his letters commendatory to that university, bearing date the 24th of November, 1580. “Soon after the date of the said letters,” says Anthony Wood,§ “he journeyed to Oxon, and, by the favour of Dr. Dan Donne, principal of New Inn, and his successor, Mr. Price, he had a convenient chamber allowed him in the said inn, and not only monies given to him towards his maintenance by several societies, but soon after 6*l.* 13*s.* 4*d.* per annum from the common chest of the university. In the latter end of 1580|| he was incor-

* Page 133. † Page 134. ‡ Bayle. § *Athenæ Oxon.* vol. i. page 367.

|| The university year begins and ends about Easter; therefore the latter end of 1580 is close upon Easter 1581. The entry in the *Fasti* is accordingly:—“An. Dom. 1580, March 6, Albericus Gentilis, an Italian doctor of the civil law of the university of Perugia, was incorporated.”—*Wood’s Fasti Oxon.* vol. i. p. 121.

porated doctor of the civil law of this university, as he had stood before in that of Perugia; and after he had continued some years in the said inn, he wrote certain books, and laid the foundation of others, of which the students thereof have gloried in my hearing, he receded either to C. C. Coll. or to Ch. Ch., and became the flower of the university for his profession.

In the second year of his residence at Oxford, 1582, Aubrey Gentili published, in Latin, six dialogues on the interpreters of the law, which he dedicated to Lord Leicester; in the following year, 1583, one book of readings and correspondence relating to the law; and, in the beginning of 1585, three books upon embassies. About the year 1585 or 1586, his father found that, even in Carniola, he could not remain free from persecution, and our Aubrey seems to have gone over to the continent to assist his family in arranging their second flight. He prevailed on his father to act as he himself had done, and to seek an asylum and a home in England. His younger brother, Scipio, who was pursuing his studies at Wittenburg, it was agreed, should be removed to Leyden, as nearer to the central rendezvous of the family. Whilst these arrangements were in progress, and Aubrey still on the continent, his patron, Sir Francis Walsingham, exerted his influence with Queen Elizabeth to have him joined in an embassy which the Queen was sending to the Elector of Saxony; and he was accordingly appointed, together with Horace Pallavicini. In 1587, the death of Dr. Griffin Lloyd, the Principal of Jesus, who had for ten years discharged the duties of the Regius Professor of Civil Law in Oxford, occasioned a vacancy; and both Sir Francis Walsingham and Lord Leicester concurred in recommending it to the Queen to recall Aubrey from Germany, and to appoint him to the vacant professorship.*

In the first year of his professorship, he published a decade of law readings, some of which are very curious. The first is of a

* Aubrey's visit to the continent, and public appointment abroad, are not noticed by Moreri or Bayle, or the Oxford antiquary, but the statement in the text is supported by the following passage in Aubrey's dedication to Walsingham, of his "*Disputationum decas Prima*," printed in London, 1587, p. 2:—"Et verò tibi cur non debeam maximè, si tu is fuisti, qui sex continuis annis me, ac meos tanta es complexus humanitate semper, ut, si excellentissimum Leicestrensem excipio, nullus omnino mihi occurrat, quem tibi parem hac in parte facere possim. Discedentem deinde me, et vale tibi dicentem, Angliæque, non tu ferè etiam votis reducem exoptasti, et tuorum erga me sensuum, voluntatisque interpres reditum auguratus es? Absentem nec sine honore esse voluisti, qui viro illustri Horatio Palavicino comitem me in legatione, qua ille pro augustissima Regina apud Saxoniz electorem functus est, adjungi curaveris. Et mox cum de regio professore prospiciendum Oxoniensibus esset, susceptum illustrissimo Leicestrensi de me revocando consilium sic adprobasti, ut eum initè alacrem deliberationis executorem efficeris; et deliberationem ipsam Reginz serenissimæ sic laudasti, ut tua tandem opera datum sit, quod extremum in negotio conficiendo supererat. Redeuntem porro quanta me læticia exceperis?" &c.

medico-legal cast, on the period of gestation,* and the learned professor quotes some of his father's cases with as much naïveté as one of the physicians in a late peerage case referred to instances of a still more personal interest. The second is on the question whether the sovereign is above the law or restrained by law: the third is on accumulative legacies: the sixth, whether a judge is bound to decide according to the evidence, or from his own conviction of the truth of the case. The last is on treasure trove.

In 1587 and 1588, Aubrey published, in three separate parts, his treatise on the rights of war. This work has never happened to fall under the observation of the writer. The learned Italian Protestant is, in one particular at least, pronounced by a very competent judge, to be inferior to a contemporary author on the same subject, the famous Spanish Jesuit Suarez. "Suarez," observes Sir James Mackintosh,† "first saw that international law was composed not only of the simple principles of justice applied to the intercourse between states, but of those usages long observed in that intercourse by the European race, which have since been more exactly distinguished as the consuetudinary law acknowledged by the Christian nations of Europe and America. On this important point his views are more clear than those of his contemporary, Alberico Gentili."

In the year 1599 our author published two treatises—one on the arms of the Romans, and the second on stage players and on the nature and degrees of falsehood. This latter tract gave occasion to much obloquy, and involved him in a course of controversy. Some of his refinements on equivocation and mental reservation are certainly expressed in such a manner as cannot be justified. For instance,‡ he maintains that a witness, who is indisposed to answer a question as to facts which are within his knowledge, is authorised to say, "I cannot tell;" and he considers it to be the judge's or the advocate's fault, and not the witness's, if the answer is allowed to convey the impression that the witness is really ignorant of the matter. It is lamentable to see the system of *non mi ricordo* so gravely maintained. But such positions on the subject of truth were only objected to by men of sense and reflection: the discussion of stage plays involved the author in the much fiercer heats of reli-

* The whole may be considered a commentary on those lines of Cæcilius:

"Insolet ne mulier decimo mense parere?"

Pol nono etiam, septimo, atque octavo."

† Second Preliminary Dissertation to the Encyclopædia Brit. page 315.

‡ "Quacunq; uti licet amphibologia quam usitatus sermo ferre potest. Et qui quid scit, si interrogetur, an illud sciat, respondens se nescire, sic liberatur a mendacio, quasi senserit se nescire utrum diceret. Et de suo facto interrogatus, si responderit, se non meminisse itidem censeatur non mendacium dicere, quasi itidem sit ejus sensus, se non meminisse, ut tum diceret."

gious animosities. Dr. Rainolds and William Gage were in the midst of a bitter warfare on the legality of theatrical amusements. Aubrey still wished to lend a little aid, and wrote two letters to Dr. Rainolds, which were subjoined to a book called "The Overthrow of Stage Plays." This Dr. Rainolds, we may observe, by the way, was John Rainolds, originally a zealous Romanist, and his brother William a warm reformer. The brothers had frequent discussions on their points of faith, the result of which was, that William became a convert to Popery and John turned Protestant. Each of them is accounted, by the party which he joined, as one of their ablest champions. Such reciprocal conversions must be very perplexing facts to those who consider men as reasoning machines, and who suppose that the affections have nothing to do with the operations of the intellect. That Dr. John Rainolds was no ordinary man we may judge from what Hakervill says of him in his noble *Apology of the Power and Providence of God*; when speaking of prodigies of memory.* "Of Dr. Rainolds, it is most certain that he excelled this way to the astonishment of all that were inwardly acquainted with him, not only for St. Augustine's works, but almost all classic authors: so as in this respect it might truly be said of him, which hath been applied to some others, that he was a living library, or third university. I have heard it very credibly reported, that upon occasion of some writings which passed to and fro betwixt him and Dr. Gentilis, then our professor in the civil laws, he publicly professed that he thought Dr. Rainolds had read and did remember more of those laws than himself, though it were his profession."

In 1600 Aubrey published a dissertation upon the first book of the *Maccabees*, in which, to the great horror of some of his Protestant friends, he seemed to go far to insinuate its canonical authority. In 1601 he published a work, in three books, on marriage, in which he determines in favour of the opinion generally entertained by Protestants, that in case of adultery the injured party is not only justified in dissolving the existing marriage, but is also entitled to venture upon other nuptials. In a letter, however, which he subsequently addressed to John Howton, who, though a Protestant, had maintained the doctrine of the indissolubility of marriage, Gentili expressed himself with so much ambiguity, that he must either have been unable to come to a positive conclusion upon the point, or have wished to disguise his real sentiments. About this time he was appointed advocate-general in England for the King of Spain; and, some while afterwards, published a short tract on the duties of his office.

In 1605 he gave fresh scandal by publishing three dissertations

—one on the books of the canon law, the second on the books of the civil law, and the third on the latinity of the Vulgate. In the last he maintains that the faults found with the Vulgate showed not the incapacity of the translator, but the ignorance of the objectors.

In 1614 he published a commentary on the meaning of terms in the civil law; and also a discourse on marriages by proxy, which he dedicated to the Lord Chancellor, Egerton.

In 1616 he died, but it is not clear whether he was buried in Christ Church or London. He left behind him a widow named Hesther, who afterwards lived at Rickmansworth, in Hertfordshire, where she died in 1648, and two sons, Robert and Matthew. Of Matthew no memorial is found. But Anthony Wood gives an account of Robert written truly in his own fashion,* as follows:—
 “Robert Gentilis, son of Aubrey Gentilis, was born in London, matriculated as a member of Christ Ch. 19th of April, 1599, in the ninth year of his age, took the degree of Bach. of Arts as a member of Jesus Coll. in the beginning of July, 1603; was translated to St. John’s Coll. soon after, and became collector in the Lent following for proctor to land of that house. Thence he was elected probationary fellow of All S. Coll. in 1607, by the endeavour of his father, who got him sped into that house by an argument in law, as being under the statutable years. In the said coll. he continued for some time, took a degree in the civil law, but turned a rake-hell, became king of the beggars for a time, and so much given up to sordid liberty, if not downright wickedness, that he not only spent all he could get from his father, whom he would often abuse, but also, afterwards, what he could get from his mother, to whom he was very disobedient, as she in her last will confesseth. Afterwards he travelled beyond the seas, took up and became a sober man, and at his return was a retainer to the royal court, and received a pension from the King. He hath translated from Ital. into English, 1. ‘The History of the Inquisition,’ Lond. 1639, qu. written by Paul Sewita; 2. ‘Of the Success and Chief Events of the Monarchy of Spain, and of the Revolt of the Catalonians,’ Lond. 1639, in 4to., written by Marquis Virgilio Malvezzi; 3. ‘Considerations on the Lives of Alcibiades and Coriolanus,’ Lond. 1650, in 4to., written by the same author; also from French into English, ‘Le Chemia Abrege, or a Compendious Method for the obtaining of Sciences in a short Time, together with the Statutes of the Academy founded by the Cardinal of Richlieu.’ Lond. 1654, Oct.; and, lastly, from Spanish, as it seems, into English, ‘The Antipathy between the French and the Spaniard,’

* *Athenæ Oxon.* vol. ii. p. 190.

Lond. 1641, in 4to. dedicated by the translator to Sir Paul Pindar, knight., to whom, in his epistle, he promiseth something that shall be his own invention, that is, to publish something of his own writing; but whether he was as good as his word I know not."

Of the five younger children of Matthew Gentilis nothing remarkable is known; but Scipio, the next brother to Aubrey, who has been mentioned before as removed from Wittenburg to Leyden, distinguished himself as a professor of the civil law, successively in the universities of Heidelberg and Altdorf. He was particularly eminent for the union of classical studies with learning in his profession, and his works, which have been collected together and published at Padua, in six quarto volumes, show that he had singular address in illustrating law by polite literature. In 1612 he married a gentlewoman of Lucca, the daughter of Cæsar Calandrini, and had by her a son and a daughter. He died in 1616. His widow suffered severe losses during the wars in Germany; and in the year 1635 we find a letter written by Vossius to Archbishop Laud, expressing a hope that something could be done for the son, so as to enable him to finish his education either in Oxford or at Cambridge, and trusting that the memory of Aubrey might be of service to his nephew. But the event of this application is not recorded (though a private letter from Vossius to Laud's secretary shows that Vossius begged the application itself might be considered as rather a work of supererogation upon his part), nor do any further traces appear of the family.

ART. VII.—*The Province of Jurisprudence Defined.* By John Austin, Esq., Barrister at Law. 8vo. London. 1832.

We hail the appearance of this work with peculiar satisfaction. An attempt, even, to treat the subject of law systematically as a science, is something so new and unheard-of in this country, that, when we consider the vast importance of the subject, in the present age of legal movement (for reformation we can hardly call it), we cannot help looking upon the publication of the present work almost as an era in the history of English jurisprudence. Whilst the sister science, legislation, has received a considerable share of attention, and we can boast of treatises (if we may include in that number the works of our countryman, Mr. Bentham, as they have issued from the pen of the late M. Dumont) of superlative merit, and which leave little to be accomplished in this department of

philosophy, it seems not to have occurred to our English jurists that general jurisprudence—law in the abstract, and considered apart from all existing systems—could itself be the subject matter of a science. We have accordingly, we believe, with the exception only of a few fragments of Mr. Bentham, and an occasional article in the *Encyclopædias*, not a single English treatise on the philosophy of law. We have, it is true, histories of our law and treatises upon particular branches of it, of great ability; and one work at least, we mean Sir W. Blackstone's *Commentaries*, in which the whole field of English law is treated with considerable claims to the merit of scientific arrangement (so far as the task of exposition goes); but in all of these, the subject is viewed with reference only to the existing system of English jurisprudence; and, with the exception of the last, their authors pretend to no higher aim than that of expounding the principles of the existing laws applicable to the immediate subject in hand. The work of Sir W. Blackstone, indeed, is one of far higher pretensions: there is a parade of philosophy throughout it, and an occasional use of the nomenclature of the foreign jurists, which give to the commentaries an air of being something more than a mere exposition of the law of England. But these we regard merely as the blemishes of a work, in other respects of very extraordinary merit; for the nomenclature which he has borrowed, and often misapplied, serves rather to obscure than elucidate the divisions of his subject; and his philosophy seldom carries him farther than to cite or to devise ingenious reasons why every thing that is, however anomalous or absurd, is best. Blackstone has, in this respect, achieved for the law and constitution of England, what Montesquieu had done before him for all governments: the great aim of both seems to have been, to show that in every case the existing institutions are the best possible for the circumstances of the country, and that all change is therefore to be deprecated. The great merit of Sir W. Blackstone's work, as an exposition of the law of England, we should be the last persons to question: of its comprehensiveness and accuracy, those only will speak lightly who have not taken the trouble to examine it in detail, or who have not had occasion, practically, to avail themselves of the vast stores of legal information which it contains. But, save as a work of practical utility, its merits are wholly of a negative character. From the disposition of its author, constantly and indiscriminately to panegyrisé and uphold whatever he finds established, it is infinitely more calculated to retard than to advance the science of the law. We rejoice, therefore, at the appearance of a work professing to treat philosophically of the nature of law. It seems to hold out the assurance that this science is beginning, at length, to receive some share of attention; and, until this shall be the case, we are satisfied

that all hope of an effectual reform of our legal system is vain. Feeling confident, too, as we do, that the time is not far distant when the disjointed and patchwork codification which has been going on for the last half dozen years must give place to more systematic measures, it is impossible to estimate the importance of the dissemination of sound and accurate notions of law, more especially among those who, directly or indirectly, may be called upon to take part in the great work.

Into the principles of legislation our author does not consider it within the province of the jurist to inquire. His business is with the science of law in the abstract—with that which necessarily belongs to law as it obtains in all civilised communities—with the principles and distinctions which every system of law inevitably involves—with the sources of law—its modes of operation—the subjects about which it is conversant—its various departments;—and all this without regard to the goodness or badness of the law, or its perfect or imperfect adaptation to what *ought to be* the end in view. The consideration of what *ought to be* law is the business of *legislation*, which is a branch of ethics quite distinct from the science of *jurisprudence*. If we may be pardoned a simile, we would say that jurisprudence is to legislation what the science of chemistry is to the science of medicine; the one deals with necessary properties, the other with their application to a proposed end. Fortunately, as we have observed, the science of legislation has not been left without able expounders. Indeed, the great principles which ought to guide the legislator in his course are now beginning to be generally admitted; the difficulty is in the application. So complicated is the system of law prevailing in every community which has attained to any degree of civilisation—and especially in this country—so numerous its departments, so multifarious its objects, that any attempt to reduce the whole, upon any given principle, into a system at once consistent and comprehensive, has always been looked upon as little more than the dream of a visionary. Though seeing and fully admitting the imperfections and absurdity of particular parts of the prevailing system, and the inadequacy of the whole to the end in view, yet, unable to see his way to any general reform of the whole system, and observing the frequent mischief, and, still more frequently, the doubtful advantage resulting from partial attempts at improvement, again and again has the legislator, with the best intentions, been driven to abandon the task of legal reformation in despair. The difficulties, it must be admitted, are great; and in the almost total absence of the cultivation of the science of jurisprudence in this country, it is no wonder they have been considered insuperable. Laws being the mechanism with which the legislator is to work out a proposed end, how is it possible, without a thorough knowledge

of their nature and properties—without, in short, a complete mastery of the whole *rationale* of law—how is it possible for the legislator, however well disposed, however sound his principles of legislation, to construct a perfect system of laws for any country?

The work before us consists of an Outline of a course of lectures on General Jurisprudence, and of the first six lectures of the course. We are informed, in the preface, that these lectures comprise ten of the course, as originally delivered at the London University, and which the author has thrown into six, for the more convenient distribution of his subject. These are devoted to an attempt to determine the province of jurisprudence. What was his immediate object in publishing this portion of his lectures he does not tell us; nor whether it is his intention to proceed with the publication of the whole course. We trust it is so. Such a work would be of inestimable value. The present lectures, however, form a complete work of themselves on one, and that a very interesting, branch of the subject; and we welcome with pleasure these first-fruits* of the London University.

The Outline, which is prefixed by way of introduction to the lectures, contains an analytical view of the whole science of law—an analysis of the considerations which enter into the examination of every system of law, good or bad—of that, in short, which is common, and necessarily belongs to each. It presents to us, at one view, the whole subject-matter of the science of law in all its extent; its sources, and its various departments and subdivisions. This we consider by far the most important and valuable part of the present publication. To perfect it must have cost its author years of study and research. It is a masterpiece of analysis: and whether we have the good fortune to see the "Outline" filled up by the same hand or not, it is there to guide and abridge the labour of those who, in future, shall cultivate the same field. It was our first intention to give some account of the Outline—to analyse the analysis—and to contrast it with the somewhat more simple and less technical, but, to our view, impracticable, system of jurisprudence suggested by Mr. Mill, in his ingenious essay in the supplement to the *Encyclopædia Britannica*, and which may be regarded as a compendium of the views of Mr. Bentham on this subject. But we found it would be quite impossible, within the limits to which we are confined, and consistently with our design of giving some account of the body of the work itself, to accomplish this object, or to give any adequate notion of our author's scheme of

* First-fruits we mean in any department of science, for which a University was peculiarly wanted in the metropolis. We are far from denying that works of great merit on the elementary branches of knowledge, and on some branches of medical science, have issued from her press.

jurisprudence as indicated in the outline. Indeed, when we state that the Outline itself occupies upwards of eighty octavo pages, although strictly confined to an exposition of the scope of the proposed course of lectures, it will at once appear how impracticable must have been the attempt. We shall content ourselves, therefore, with this passing notice of it, and proceed to give some account of that part of the course which is published.

This consists, as we have said, of six lectures : and their object is to determine the province of jurisprudence. The author thus states the purpose of this branch of his course at the beginning of the first lecture :—

“ The matter of jurisprudence is positive law : law, simply and strictly so called : or law set by political superiors to political inferiors. But positive law (or law, simply and strictly so called) is often confounded with objects to which it is related by *resemblance*, and with objects to which it is related in the way of *analogy* : with objects which are *also* signified, *properly* and *improperly*, by the large and vague expression *law*. To obviate the difficulties springing from that confusion, I begin my projected course with determining the province of jurisprudence, or with distinguishing the matter of jurisprudence from those various related objects : trying to define the subject of which I intend to treat, before I endeavour to analyse its numerous and complicated parts.” p. 1.

The term law, in the largest sense in which it is properly used, comprises, according to our author, two main divisions : laws set by God to his human creatures, and laws set by men to men. The latter division he subdivides into two branches : laws set by political superiors to persons in a state of subjection to them, and laws set by men, *not* being political superiors, to other men. The former of these branches or subdivisions forms the appropriate subject of jurisprudence.

The sentiments or opinions of men concerning human conduct, which, from the close analogy they bear to laws properly so called, are frequently *improperly* styled laws, under such phrases as “the moral law,” “the law set by public opinion,” the “law or rules of honour,” and the like, our author treats as a branch of *morality* only. And to the same head he refers that branch or subdivision of human laws, properly so called, which consists of laws set by men *not* being political superiors.

All of these laws, as well those properly as those improperly so called, have in them, it will be observed, this property in common, viz. that all of them are set, or are assumed to be set, by intelligent and rational beings to intelligent and rational beings ; and by this property or characteristic they are broadly distinguished from the numerous class of cases in which, by a mere metaphor, the name of law is given to the uniformity which is observed in the phenomena of inanimate nature, or the habits of the

lower animals; as, for instance, when we talk of *laws* of motion; of *laws* observed by the lower animals; of *laws* regulating the growth and decay of vegetables, and the like: a metaphor which, flagrant as it is, has done more to confuse the science of jurisprudence than will readily be believed by those who are not conversant with the writings of the most celebrated jurists both ancient and modern.*

The whole field of law, therefore, as well that *properly* as that *improperly* so styled (but excluding that which is so called by mere *metaphor*), is divided by our author into three departments.

1. The first comprises the laws set by God to men. These, which are sometimes styled the *natural law*, or the *law of nature*, and so are not unfrequently confounded with the so-called law, in the mere metaphorical sense which we have adverted to, our author styles the *Divine law*, or the *law of God*.

2. The second comprises that division or class of human laws which consists of laws set by political superiors or persons delegated by them; and

3. The third comprises that division or class of human laws, properly so called, which consists of laws set by men, *not* being political superiors; and also those improperly styled laws which are closely analogous to laws properly so called, but are, in fact, merely opinions or sentiments of men in regard to human conduct.†

The second of these departments, as we have said, is the peculiar province of jurisprudence; and to this our author gives the name of *positive law*. He thus defines it:—"Every positive law, or every law simply and strictly so called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person

* The following passage, which is the first sentence in Montesquieu's celebrated treatise "*De l'Esprit des Loix*," may serve to give some notion how objects the most widely different are sometimes blended and confounded: and when the author proceeds, as he does, to argue from the one to the other, the reader may guess whether elucidation of the subject in hand, or obscurity, is more likely to be the result. "*Les lois dans la signification la plus étendue, sont les rapports nécessaires qui dérivent de la nature des choses: et dans ce sens tous les êtres ont leur lois: la Divinité a ses lois; le monde matériel a ses lois; les intelligences supérieures à l'homme ont leurs lois; les bêtes ont leurs lois; l'homme a ses lois.*" The same confusion of laws imperative and proper, with laws which are merely such by perversion of the term, is observable in Blackstone's disquisition on the nature of laws in general.

† Our author's division is, in the main, the same as that given incidentally by Locke, in that part of his *Essay on the Human Understanding* in which he is inquiring into the nature of relation. B. ii. c. 18. The whole passage is cited in the fifth lecture in a somewhat condensed form; and it presents a striking instance of the vigour of thought and rectitude of judgment which characterise the investigations of that incomparable man, into whatever region they are directed, and causes infinite regret that he did not make the present the subject of separate and exact inquiry.

or body is sovereign or supreme. Or (changing the expression) it is set by a monarch or sovereign number to a person or persons in a state of subjection to its author." The term *positive*, that is, existing by position, he has adopted, as serving more commodiously than any other to distinguish this department of law at once from the divine law and from that division of human law, properly so called, which, as not being set by political superiors, our author refers to the head of morality.

In like manner, to the third department our author gives the name of *positive* morality, in order to distinguish morality as actually obtaining in any given society, from that portion of the Divine law, or morality *as it ought to be*, with which it is frequently confounded. "By the common epithet, *positive*" (he says, in a note to page 130), "I denote that both classes flow from human sources. By the distinctive names *law* and *morality* I denote the difference between the human sources from which the two classes respectively emanate."

The immediate and proper business of the professor of jurisprudence is with the science of positive law as thus defined; but in order to be able to deal satisfactorily with his subject, it was necessary to clear the way by accurately distinguishing positive laws from those other kinds of law, properly and improperly so called, to which they are closely analogous, and with which they are frequently confounded. And this is the purpose of the six lectures on the province of jurisprudence which we are examining.

Our author accordingly proceeds, in the first lecture, to examine and determine the essentials of a *law* or *rule*, taken with the largest signification which can, *properly*, be given to the term.

In the second, third, and fourth, he examines the marks or characters by which the laws of God are distinguished from other laws; and he also discusses the different hypotheses which have obtained with regard to the nature of the index to the *unrevealed* portion of the Divine laws.

In the fifth lecture he examines the distinguishing marks of those positive moral rules which are laws properly so called, and of those which are styled laws or rules by an analogical extension of the term; and he notices shortly the nature of those which, in a metaphorical sense merely, are sometimes styled laws.

And he concludes by examining and defining in the sixth lecture the marks which distinguish positive laws, or laws strictly so called.

The first lecture is employed in determining what is meant by a law. It certainly is of importance to know, at the outset, precisely what a law is, though the task of defining it is by no means an easy one. "The elements of a science," as our author observes, "are precisely the parts of it which are explained least easily."

Terms that are the largest, and therefore the simplest, of a series, are without equivalent expressions into which we can resolve them *concisely*. And when we endeavour to *define* them, or to translate them into terms which we suppose are better understood, we are forced upon awkward and tedious circumlocutions." He thus explains the meaning of the term *command*.

"If you express or intimate a wish that I shall do or forbear from some act, and if you will visit me with an evil in case I comply not with your wish, the *expression* or *intimation* of your wish is a *command*. A command is distinguished from other significations of desire, not by the style in which the desire is signified, but by the power and the purpose of the party commanding, to inflict an evil or pain in case the desire be disregarded. If you cannot or will not harm me, in case I comply not with your wish, the expression of your wish is not a command, although you utter your wish in imperative phrase. If you are able and willing to harm me in case I comply not with your wish, the expression of your wish amounts to a command, although you are prompted by a spirit of courtesy to utter it in the shape of a request. '*Preces erant, sed quibus contradicere non posset.*' Such is the language of Tacitus, when speaking of a petition by the soldiery to a son and lieutenant of Vespasian." pp. 6, 7.

Having adverted to the terms *duty* and *sanction*, which he shows are inseparably connected with the term *command*, each of the three embracing the same ideas as the others, though each denotes those ideas in a peculiar order or series, he proceeds to distinguish laws (which are a species of commands), from those other kinds of commands which, being *occasional* or *particular*, are not, properly speaking, laws; and this part of his subject he illustrates with a number of striking and familiar instances. He then defines a law as follows:—

"A law is a command which obliges a person or persons.

"But, as contradistinguished or opposed to an occasional or particular command, a law is a command which obliges a person or persons, and obliges *generally* to acts or forbearances of a *class*.

"In language more popular, but less distinct and precise, a law is a command which obliges a person or persons to a *course* of conduct." p. 18.

The rest of this lecture is taken up in discussing a number of subordinate topics which, from their not being clearly understood, have tended to embarrass and perplex the study of the science of law. Amongst others, he notices the laws of *imperfect obligation* of the Roman jurists, which he shows to be no laws at all; and the laws styled *customary*, which he shows to belong strictly to the class of positive laws established by the state.

The Divine law is the subject of the next three lectures. With regard to that portion of the Divine laws which God has been

pleased to *reveal*, there is, as our author observes, no difficulty—
 “They are *express* commands: portions of the *Word* of God: commands signified to men through the medium of human language, and uttered by God directly, or by servants whom he sends to announce them.”

The *unrevealed* portion of his laws, the Deity has left to be discovered by the light of nature, or reason, and the question arises, by what marks or signs has God made known to his rational creatures this portion of his law?

There are two theories by which it is attempted to solve this question. The first is that which is commonly called the hypothesis or theory of a *moral sense*; or of *innate practical principles*; or of a *practical reason*; or of *common sense*, &c. According to this theory, “there are human actions which all mankind approve, human actions which all men disapprove; and these universal sentiments arise at the thought of those actions, spontaneously, instantly, and inevitably. Being common to all mankind, and inseparable from the thoughts of those actions, these sentiments are marks or signs of the Divine pleasure. They are proofs that the actions which excite them are enjoined or forbidden by the Deity.”

The other is what is commonly called the theory of *utility*. It is thus summarily stated by our author:—

“According to the other of the adverse theories or hypotheses, the laws of God, which are not revealed or promulged, must be gathered by man from the goodness of God, and from the tendencies of human actions. In other words, the benevolence of God, with the principle of general utility, is our only index or guide to his unrevealed law.

“God designs the happiness of all his sentient creatures. Some human actions forward that benevolent purpose, or their tendencies are beneficent or useful. Other human actions are adverse to that purpose, or their tendencies are mischievous or pernicious. The former, as promoting his purpose, God has enjoined. The latter, as opposed to his purpose, God has forbidden. He has given us the faculty of observing; of remembering; of reasoning: and, by duly applying those faculties, we may collect the tendencies of our actions. Knowing the tendencies of our actions, and knowing his benevolent purpose, we know his tacit commands.” pp. 35, 36.

There is also an intermediate theory, compounded of the two, and according to which the moral sense is our index to *some* of the commands of the Deity; but the principle of general utility is our index to *others*. It is this intermediate hypothesis which has given rise to the division, by the classical Roman jurists, of *jus civile* (or positive law), into *jus gentium* and *jus civile*, and the consequent division of crimes into crimes *jure gentium* and crimes *jure civili*; and to the corresponding division, by modern writers on jurisprudence, of positive law into *law natural* and *law positive*, and the

consequent division of crimes into crimes which are *mala in se* and crimes which are *mala quia prohibita*.

The two principal theories are examined and discussed at some length, and with considerable novelty of illustration; and the question is disposed of (we need hardly say, in favour of the theory of utility) in a manner that leaves little to be desired. We shall not attempt to follow our author through his elaborate argument; the question being one which, though quite necessary to be determined in a complete inquiry into the *rationale* of jurisprudence, yet belongs more immediately to the science of ethics than to that which is the appropriate matter of this publication; and we shall content ourselves, therefore, with extracting a few passages, which have particularly struck us in our perusal of this part of the work.

Having adverted to a very prevalent objection to the theory of utility, founded on the erroneous assumption that, according to this theory, every act of our lives must be preceded by a calculation of consequences; or, in other words, that our conduct must on all occasions be determined by an immediate or direct resort to the principle; and having shown, with great clearness, that if our conduct were truly adjusted to the principle of general utility, it would, for the most part, be guided by *rules* or maxims, and by *moral sentiments* founded on those rules (the rules themselves emanating from the Deity, and to which the useful or pernicious *tendencies* of human actions are the *guide* or *index*), he thus explains one of the very few anomalous cases in which it is necessary to make a direct resort to the principle:

“There certainly are cases (of comparatively rare occurrence) wherein the specific considerations balance or outweigh the general: cases which (in the language of Bacon) are ‘immersed in matter:’ cases perplexed with peculiarities from which it were dangerous to abstract them; and to which our attention would be directed, if we were true to our presiding principle. It were mischievous to depart from a rule which regarded any of these cases; since every departure from a rule tends to weaken its authority. But so important were the *specific* consequences which would follow our resolves, that the evil of observing the rule might surpass the evil of breaking it. Looking at the reasons from which we had inferred the rule, it were absurd to think it inflexible. We should, therefore, dismiss the *rule*; resort directly to the *principle* upon which our rules were fashioned; and calculate *specific* consequences to the best of our knowledge and ability.

“For example, If we take the principle of utility as our index to the Divine commands, we must infer that obedience to established government is enjoined generally by the Deity. For, without obedience to ‘the powers which be,’ there were little security and little enjoyment. The ground, however, of the inference, is the *utility* of government: and if the protection which it yields be *too costly*, or if it vex us with *needless* restraints and load us with *needless* exactions, the principle which points at submission as our general duty may counsel and justify resistance. Disobedience to an established government, let it be never so bad, is an

evil: for the mischiefs inflicted by a bad government are less than the mischiefs of anarchy. So momentous, however, is the difference between a bad and a good government, that, *if it would lead to a good one*, resistance to a bad one would be useful. The anarchy attending the transition, were an extensive, but a passing evil: the good which would follow the transition, were extensive and lasting. The peculiar good would outweigh the generic evil: the good which would crown the change in the insulated and eccentric case, would more than compensate the evil which is inseparable from rebellion.

"Whether resistance to government be useful or pernicious, be consistent or inconsistent with the Divine pleasure, is, therefore, an *anomalous* question. We must try it by a direct resort to the ultimate or presiding *principle*, and not by the Divine *rule* which the principle clearly indicates. To consult the rule were absurd. For, the rule being general and applicable to ordinary cases, it ordains obedience to government, and excludes the question.

"The members of a political society who revolve this momentous question, must, therefore, dismiss the rule, and calculate specific consequences. They must measure the mischief wrought by the actual government; the chance of getting a better, by resorting to resistance; the evil which must attend resistance, whether it prosper or fail; and the good which may follow resistance, in case it be crowned with success. And, then, by comparing these, the elements of their moral calculation, they must solve the question before them to the best of their knowledge and ability.

"And in this eccentric or anomalous case, the application of the principle of utility would probably be beset with the difficulties which the current objection in question imputes to it generally. To measure and compare the evils of submission and disobedience, and to determine which of the two would give the balance of advantage, would probably be a difficult and uncertain process. The numerous and competing considerations by which the question must be solved, might well perplex and divide the wise, and the good, and the brave. A Milton or a Hampden might animate their countrymen to resistance, but a Hobbes or a Falkland would counsel obedience and peace.

"But, though the principle of utility would afford no certain solution, the community would be fortunate, if their opinions and sentiments were formed upon it. The pretensions of the opposite parties being tried by an intelligible test, a peaceable compromise of their difference would, at least, be possible. The adherents of the established government, might think it the most *expedient*: but, as their liking would depend upon reasons, and not upon names and phrases, they might possibly prefer innovations, of which they would otherwise disapprove, to the mischiefs of a violent contest. They might chance to see the absurdity of upholding the existing order, with a stiffness which must end in anarchy. The party affecting reform, being also intent upon *utility*, would probably accept concessions short of their notions and wishes, rather than persist in the chase of a greater possible good through the evils and the hazards of a war. In short, if the object of each party were measured by the standard of utility, each might compare the worth of its object with the cost of a violent pursuit." pp. 53-6.

In the same lecture are some excellent observations on the education of the labouring classes, and the incalculable advantages that might be expected to result (especially with a view to the administration of justice), from their being imbued with the leading principles of ethical and political science, are pointed out. Adverting to the degree of instruction of which the labouring classes are capable, the writer observes :

“ Profound knowledge of these, as of the other sciences, will always be confined to the comparatively few who study them long and assiduously. But the multitude are fully competent to conceive the *leading principles*, and to apply those leading principles to particular cases. And, if they were imbued with those principles, and were practised in the art of applying them, they would be docile to the voice of reason, and armed against sophistry and error. There is a wide and important difference between ignorance of principles and ignorance of particulars or details. The man who is ignorant of principles, and unpractised in right reasoning, is imbecile as well as ignorant. The man who is simply ignorant of particulars or details, can reason correctly from premises which are *suggested* to his understanding, and can justly estimate the consequences which are drawn from those premises by others. If the minds of the many were informed and invigorated, so far as their position will permit, they could distinguish the statements and reasonings of their instructed and judicious friends, from the lies and fallacies of those who would use them to sinister purposes, and from the equally pernicious nonsense of their weak and ignorant well-wishers. Possessed of directing principles, able to reason rightly, helped to the requisite premises by accurate and comprehensive inquirers, they could examine and fathom the questions which it most behoves them to understand: though the leisure which they can snatch from their callings is necessarily so limited, that their opinions upon numerous questions of subordinate importance would continue to be taken from the mere *authority* of others.”*

He thus meets an argument which is sometimes objected to the theory of utility, founded on its imperfection as an index to the Divine will. It consists not, it is urged, with the known wisdom, and the known benevolence of the Deity, that he should signify his

* Our author's illustrations are drawn from the science of political economy. But suppose a perfect code of laws, its various portions being accompanied with an authorised commentary, explanatory of the design and motives of the legislator—a *commentaire justificatif*, as suggested in M. Dumont's treatise, “ *De l'Organisation Judiciaire et de la Codification*,” compiled from Mr. Bentham's papers—what admirable class books might be formed, from such a source, for the general education of the people, and such as one might at length hope would satisfy the scruples of all sects and parties.

“ Qu'on se représente (says M. Dumont) combien la jeunesse instruite dans des justes notions sur tous ces points apprenant de la loi même à n'envisager la société que comme une assurance mutuelle de bonheur, à peser toutes ses actions dans la balance de l'intérêt général, serait différente de celle qui entre dans le monde sans avoir aucune connaissance des lois, ni aucune idée claire du principe de ses devoirs. La véritable éducation est celle des lois ; leur étude doit être la principale occupation des jeunes citoyens dès qu'ils ont atteint l'âge de raison : ces instructions puisées dans le commentaire raisonné exerceraient un empire d'autant plus fort qu'elles ont déjà leur racine dans le cœur, et qu'elles sont toutes fondées sur les besoins de l'humanité.” p. 348-9.

commands defectively and obscurely to those upon whom they are binding.

"But," observes our author, "admitting the imperfection of utility as the index to the Divine pleasure, it is impossible to argue, from this its admitted imperfection, 'that utility is *not* the index.'

"Owing to causes which are hidden from human understanding, all the works of the Deity which are open to human observation are alloyed with imperfection or evil. That the Deity should signify his commands defectively and obscurely, is strictly in keeping or unison with the rest of his inscrutable ways. The objection now in question proves too much, and, therefore, is untenable. If you argue, 'that the principle of utility is *not* the index to his laws, *because* the principle of utility were an *imperfect* index to his laws,' you argue 'that all his works are *in fact* exempt from evil, *because* imperfection or evil is inconsistent with his wisdom and goodness.' The former of these arguments *implies* the latter, or is merely an application of the sweeping position to *one* of innumerable cases.

"Accordingly, if the objection now in question will lie to the theory of utility, a similar objection will lie to *every* theory of ethics which supposes that any of our duties are set or imposed by the Deity.

"The objection is founded on the alleged inconsistency of evil with his perfect wisdom and goodness. But the notion or idea of evil or imperfection is involved in the connected notions of law, duty, and sanction. For, seeing that every law imposes a restraint, every law is an evil of itself: and, unless it be the work of malignity, or proceed from consummate folly, it also supposes an evil which it is designed to prevent or remedy. Law, like medicine, is a preventive or remedy of *evil*: and, if the world were free from evil, the notion and the name would be unknown.

"That his laws are signified obscurely, if utility be the index to his laws, is rather a presumption in favour of the theory which makes utility our guide. Analogy might lead us to expect that they would be signified obscurely. For they suppose the existence of evils which they are designed to remedy: let them be signified as they may, they remedy those evils imperfectly: and the imperfection which they are designed to remedy, and of which the remedy partakes, might naturally be expected to show itself in the mode by which they are manifested.

"My answer to the objection is the very argument, which the excellent Butler, in his admirable 'Analogy,' has wielded in defence of Christianity with the vigour and the skill of a master." pp. 90-2.

"And here my solution of the difficulty necessarily stops. A complete solution is manifestly impossible. To reconcile the existence of evil with the wisdom and goodness of God, is a task which surpasses the powers of our narrow and feeble understandings. This is a deep which our reason is too short to fathom. From the decided predominance of good which is observable in the order of the world, and from the manifold marks of wisdom which the order of the world exhibits, we may draw the cheering inference, 'that its author is good and wise.' Why the world which he has made is not altogether perfect, or why a benevolent Deity tolerates the existence of evil, or what (if I may so express myself) are the obstacles in the way of his benevolence, are clearly questions which it were impossible to solve, and which it were idle to

agitate although they admitted a solution. It is enough for us to know, that the Deity is perfectly good; and that, since he is perfectly good, he wills the happiness of his creatures. *This* is a truth of the greatest practical moment. For the cast of the affections, which we attribute to the Deity, determines, for the most part, the cast of our moral sentiments." p. 98.

In the fifth lecture our author distinguishes the different kinds of law, properly and improperly so called, which he classes under the head of positive morality, with their corresponding rights, duties, and sanctions. He does not attempt to distinguish the boundaries of law and of morals as *they ought to exist*; that is, to distinguish the acts and forbearances that ought to be the objects of law, from those that ought to be abandoned to the exclusive cognizance of morality. His business is with law and morality, as they necessarily exist in every civilised community; and to this, in the main, he strictly confines himself; although there are, incidentally, interspersed throughout his work, and especially in the notes, many valuable hints on the subject of morals and legislation.

We shall content ourselves with citing from the present lecture the following passage, in which he notices the occasional conflict which is observable between the several kinds of law.

"The body or aggregate of laws which may be styled the law of God, the body or aggregate of laws which may be styled positive law, and the body or aggregate of laws which may be styled positive morality, sometimes *coincide*, sometimes do *not* coincide, and sometimes *conflict*.

"One of these bodies of laws *coincides* with another, when acts, which are enjoined or forbidden by the former, are also enjoined, or are also forbidden by the latter.—For example, The killing which is styled *murder* is forbidden by the positive law of every political society: it is also forbidden by a so called law which the general opinion of the society has set or imposed: it is also forbidden by the law of God as known through the principle of utility. The murderer commits a crime, or he violates a positive law: he commits a conventional immorality, or he violates a so called law which general opinion has established: he commits a sin, or he violates the law of God. He is obnoxious to punishment, or other evil, to be inflicted by sovereign authority: he is obnoxious to the hate and the spontaneous ill-offices of the generality or bulk of the society: he is obnoxious to evil or pain to be suffered here or hereafter by the immediate appointment of the Deity.

"One of these bodies of laws does *not* coincide with another, when acts, which are enjoined or forbidden by the former, are not enjoined, or are not forbidden by the latter.—For example, Though smuggling is forbidden by positive law, and (speaking generally) is not less pernicious than theft, it is not forbidden by the opinions or sentiments of the ignorant or unreflecting. Where the impost or tax is itself of pernicious tendency, smuggling is hardly forbidden by the opinions or sentiments of any: And it is therefore practised by many without the slightest shame, or without the slightest fear of incurring general censure. Such, for

instance, is the case, where the impost or tax is laid upon the foreign commodity, not for the useful purpose of raising a public revenue, but for the absurd and mischievous purpose of protecting a domestic manufacture.—Offences against the game laws are also in point: for they are not offences against positive morality, although they are forbidden by positive law. A gentleman is not dishonoured, or generally shunned by gentlemen, though he shoots without a qualification. A peasant who wires hares escapes the censure of peasants, though the squires, as doing justiceship, send him to the prison and the tread-mill.

“One of these bodies of laws *conflicts* with another; when acts, which are enjoined or forbidden by the former, are forbidden or enjoined by the latter.—For example, In most of the nations of modern Europe, the practice of duelling is forbidden by positive law. It is also at variance with the law which is received in most of those nations as having been set by the Deity in the way of express revelation. But in spite of positive law, and in spite of his religious convictions, a man of the class of gentlemen may be forced by the law of honour to give or to take a challenge. If he forbore from giving, or if he declined a challenge, he might incur the general contempt of gentlemen or men of honour, and might meet with slights and insults sufficient to embitter his existence. The negative *legal* duty which certainly is incumbent upon him, and the negative *religious* duty to which he believes himself subject, are therefore mastered and controlled by that positive *moral* duty which arises from the so called law set by the opinion of his class.

“The simple and obvious considerations to which I have now adverted, are often overlooked by legislators. If they fancy a practice pernicious, or hate it they know not why, they proceed, without further thought, to forbid it by positive law. They forget that positive law may be superfluous or impotent, and therefore may lead to nothing but purely gratuitous vexation. They forget that the moral or the religious sentiments of the community may already suppress the practice as completely as it can be suppressed: or that, if the practice is favoured by those moral or religious sentiments, the strongest possible fear which legal pains can inspire may be mastered by a stronger fear of other and conflicting sanctions.” pp. 169-71.

The sixth lecture, which is that upon positive law, is the most elaborate of them all, and occupies in bulk nearly as much as all the rest put together. Agreeably to his definition of positive law, which, it will be remembered, is that which is set by a sovereign person, or sovereign body of persons, to a member or members of the independent political society, wherein that person or body is sovereign or supreme, our author proceeds, in this lecture, to analyse the expressions *sovereignty*, *subjection*, and *independent political society*; and he then enters into an examination of the different forms of supreme government, and various connected topics, which we shall presently advert to. He thus defines sovereignty and independent political society:

“The superiority which is styled sovereignty, and the independent political society which sovereignty implies, is distinguished from other

superiority, and from other society, by the following marks or characters.—1. The *bulk* of the given society are in a *habit* of obedience or submission to a *determinate* and *common* superior: let that common superior be a certain individual person, or a certain body or aggregate of individual persons. 2. That certain individual, or that certain body of individuals, is *not* in a habit of obedience to a determinate human superior." p. 199.

What shall be said to amount to a *habit* of obedience in the determinate political superior, or what to a *habit* of obedience in the bulk of the given society; what *number* or *proportion* of the members of the society, for instance, must render obedience, and *how often* and *how long* they must render it, in order that their obedience may be styled habitual, are questions of extremely difficult solution. The Saxon government, for example, although yielding occasional obedience to the dictates of the Holy Alliance, may properly be styled sovereign or supreme, and its community an independent political society. But in case these commands and this submission were somewhat more numerous and frequent, we might find it difficult to determine the class to which this community ought to belong. Again, in England, during the height of the conflict between Charles the First and the parliament, where could the sovereignty be said to reside?

"These difficulties," says our author, "often embarrass the application of those positive moral rules which are styled international law.*"

"For example: when did the revolted colony, which is now the Mexican nation, ascend from the condition of an insurgent province to that of an independent community? When did the body of colonists, who affected sovereignty in Mexico, change the character of rebel leaders for that of a supreme government? Or (adopting the current language about governments *de jure* and *de facto*) when did the body of colonists, who affected sovereignty in Mexico, become sovereign *in fact*?—And (applying international law to the specific or particular case) when did international law authorise neutral nations to admit the independence of Mexico with the sovereignty of the Mexican government?"

"Now the questions suggested above are equivalent to this:—When had the inhabitants of Mexico obeyed that body so generally, and when had that general obedience become so frequent and lasting, that the *bulk* of the inhabitants of Mexico were *habitually* disobedient to Spain, and probably would not resume their discarded habit of submission?"

"Or the questions suggested above are equivalent to this:—When had the inhabitants of Mexico obeyed that body so generally, and when

* *International law*, as wanting the distinguishing characteristic of positive law, viz. the being set by political superiors to persons in a state of subjection, our author treats as a branch of positive morality only: as part of the law set by opinion. "There are laws (he says, p. 146), which regard the conduct of independent political societies in their various relations to one another: or, rather, there are laws which regard the conduct of sovereign or supreme governments, in their various relations to one another. And laws or rules of this species, which are imposed upon nations or sovereigns by opinions current amongst nations, are usually styled *the law of nations*, or *international law*."

had that general obedience become so frequent and lasting, that the inhabitants of Mexico were independent of Spain in practice, and were likely to remain permanently in that state of practical independence?

"At that juncture exactly (let it have arrived when it may), neutral nations were authorised, by the morality which obtains between nations, to admit the independence of Mexico with the sovereignty of the Mexican government. But, by reason of the perplexing difficulties which I have laboured to explain, it was impossible for neutral nations to hit that juncture with precision, and to hold the balance of justice between Spain and her revolted colony with a perfectly even hand." pp. 213-15.

After examining the definitions of *sovereignty* and *independent political society*, which have been given by different writers of celebrity, our author proceeds to examine the various possible forms of supreme government; the real and imaginary limits which bound, or are supposed to bound, the power of sovereigns; and the origin of government and of political society, or, the causes of the habitual obedience which is rendered by the bulk of subjects, and from which the power of sovereigns to compel and restrain the refractory is entirely or mainly derived. We find it quite impossible to follow him through this part of his lecture. To examine it adequately (and it well merits a minute examination) would require an article devoted to itself. We can only, therefore, commend it to our readers as well worthy of their perusal, and as abounding in remarks at once deep and original. We cannot help adverting, however, to an elaborate note upon Hobbes (in that part of the lecture where the writer is discussing the nature of civil and political liberty, and the supposed differences between what are called free and despotic states), in which he expounds the true principles and main design of that profound philosopher, in his political writings; and endeavours to remove some portion of the odium which has been cast both on the writings and the man, by the combined hostility of the three great denominations of priests, the Roman Catholic, the high church of England, and the genuine presbyterian. There is also, in the same note, a short exposition of the system of the party of French philosophers of the middle of the last century, called the *Economists*. The whole is extremely curious and valuable.

We have as yet said nothing of our author's style. Of the language of detached portions of the lectures our readers will form some judgment from the passages which we have selected, some of which are, we think, perfect in their kind. But of the completeness with which the various parts of his subject are handled, an adequate notion can be obtained only from a perusal of the work itself. To those who are little used to metaphysical investigation, and who have not been led to consider the exactness of expression which inquiries of the nature of those pursued in these lectures demand, their style will appear sometimes unnecessarily elaborate,

and even operose; and although we cannot concur in this criticism, we think that there is occasionally something more of repetition than was necessary in *printed* lectures. This fault, if it be one, has arisen, no doubt, from the author's practice of writing his lectures for delivery, and from his having published them very much in the form in which they were delivered. There is an austerity of manner about our author, and an intrepidity of judgment, conscious of its own strength, that we exceedingly admire; and which make us readily overlook the slight expressions of contempt for the opinions of others in which he occasionally (though we must say rarely) indulges; a tone which, however natural, and almost necessary to sincerity, and however admissible in the warmth of oral delivery, is, in a work deliberately prepared for the press, better subdued. On the whole, we think, the subject considered, the style of these lectures approaches more nearly to perfection than anything of the kind which has, in recent times, fallen under our observation. And we cannot better express our opinion of its character than by saying that the author has gone far to realise that which, in his lectures, he points out as the style to be aimed at by writers upon ethics.

"The writers" (in the circumstances he is supposing) "would attend to the suggestions of Hobbes and of Locke, and would imitate the method so successfully pursued by geometers: though such is the variety of the premises which some of their inquiries involve, and such are the complexity and ambiguity of some of the terms, that they would often fall short of the perfect exactness and coherency, which the fewness of his premises, and the simplicity and definiteness of his expressions, enable the geometer to reach. But, though they would often fall short of geometrical exactness and coherency, they might always approach, and would often attain to them. They would acquire the art and the habit of defining their leading terms; of steadily adhering to the meanings announced by the definitions; of carefully examining and distinctly stating their premises; and of deducing the consequences of their premises with logical rigour. Without rejecting embellishments which might happen to fall in their way, the only excellencies of style for which they would seek, are precision, clearness, and conciseness: the first being absolutely requisite to the successful prosecution of inquiry; whilst the others enable the reader to seize the meaning with certainty, and spare him unnecessary fatigue." pp. 82, 83.

ART. VIII.—*FACTS relating to the Punishment of Death in the Metropolis.* By Edward Gibbon Wakefield. *Second Edition, with an Appendix, concerning Murder for the Sale of the Dead Body.* 8vo. London, E. Wilson, 1832.

There is no task in legislation more difficult than that of ascertaining the effect of penal laws upon the minds of those against

whom they are intended to operate. Rank, wealth, education, intelligence, sensibility of feeling, and a nice regard to honour, all unfit the high-born and accomplished legislator for the calculation. He cannot appreciate the motives which govern the ignorant, the unfeeling, and the depraved portion of society, from which proceeds the great mass of crime. Himself in the enjoyment of freedom from restraint, he imagines that confinement of the person must necessarily operate to deter the poor from crime; forgetting that to thousands and tens of thousands of those for whom he is legislating, the restraint of a gaol is little more irksome than their daily imprisonment in the unwholesome atmosphere of our great manufactories. But the most grievous miscalculation is that which is made with regard to the effect produced by the denunciation of capital punishment. "The temptation is great, the injury to society is great, and persons can only be deterred by the punishment of death," has long been the language of those from whom our laws have proceeded. The motive to refrain from crime, which the fear of death affords, must vary in every individual; and not a single session at the Old Bailey passes without proving how light and slender the causes sometimes are by which it is counterbalanced. Upon a man in the possession of all that fortune and character can confer, bound to life by the ties of affection and of friendship, the idea of a disgraceful death may operate with resistless force; but to one divested of all that can make existence acceptable, to a wretch bankrupt in fortune and in reputation, to the outcast, the miserable, and the vicious, what does life present that can render it dear? A long training to vice, a familiarity with danger, and that habitual disregard of consequences, which a long continued course of crime engenders, all contribute to strip the highest penal denunciation of its terrors. That such is the case, the number of capital offences, daily committed, leads us to conclude; but, facts are still wanting to show the immediate operation of the penal laws upon the minds of those who are disposed to crime. Unfortunately, opportunities of collecting such facts rarely occur; the history of guilt is with difficulty traced; and the communications between criminals and those who are either interested in, or capable of ascertaining the motives by which they are governed, are few and seldom.

During a well-merited imprisonment of three years in the gaol of Newgate, Mr. Edward Gibbon Wakefield enjoyed an opportunity of making himself acquainted with the habits and feelings of his fellow prisoners. With an activity of mind which prompted him to employ the leisure the law had afforded him, with a laudable curiosity to study the singular specimens of human nature around him, and with manners which enabled him to attract the confidence of those whose history he was desirous of learning, he succeeded in acquiring an insight into the characters and mo-

tives of his companions, such as few persons in his rank of life have ever obtained. The result of his inquiries, so far as they regard the punishment of death upon the minds of criminals, he has embodied in the volume before us, which, where its correctness can be relied upon, is certainly a work very deserving of attention. With regard to its accuracy, all who are acquainted with the history of its author, must naturally feel considerable doubts, which are not removed by the style of the work itself. An evident attempt at *effect*, a desire to relate striking and startling facts, an endeavour to make a good picture by heightening the colours, a smart and dogmatical tone, and occasionally a confident display of ignorance, are sufficient to inspire the reader with distrust. On the other hand, the majority of the facts related are, in substance, undoubtedly well founded; and in the opinion of those who are acquainted with the gaol of Newgate, the representation of its inmates given by Mr. Wakefield is said not to be inaccurate. Much of the information contained in the volume has reference to the general state of crime in the metropolis, and to means which exist for its prevention or suppression; but the most important part of the work is that which relates to the effect produced by capital punishments. A law, the severity of which excites public sympathy in favour of the offender, must be injurious in its operation; and how frequently does it happen that the condemned criminal at the moment of his execution is surrounded by a sorrowful and commiserating crowd? Where can we discover the beneficial effect of a scene like that described by Mr. Wakefield in the following passage?

“ One case of an attempt either at suicide or escape, which of the two was never precisely ascertained, I ought to mention, as illustrative of the effects of the punishment of death;—John Williams, an active young fellow, twenty-three years old, was convicted of ‘stealing in a dwelling-house,’ and, his sentence not being reversed, was, on the 13th of December, 1827, ordered to be executed on the 19th. On the morning of execution, he managed to elude the watchfulness of the turnkeys, and to climb up the pipe of a cistern in the press-yard, as some supposed with the intention of drowning himself in the cistern, but more probably with the wild hope of escaping. Be this as it may, he fell into the pavement of the yard, and seriously injured his legs. Though every one knew that he would be hanged presently, he was attended by a surgeon, who dressed his wounds with the same care as if surgical skill could have preserved the use of those limbs for years. He was carried from the press-yard to the scaffold, and in the struggle of death, blood flowed from his wounds, which became visible to the crowd. This shocking scene was known and commented upon by a great part of the population of London. What were its effects on the minds of those who made our laws, I cannot guess; but I know that it produced, on two classes of people in London, feelings highly prejudicial to the object of all punishment—the repression of crime. Respectable

shopkeepers in the neighbourhood of the scene of execution were heard to say, that worse than a murder had been committed, and that they should like to see the Home Secretary treated in the same way; and I am acquainted with one person who was robbed to a large amount in the following year, but who was deterred from endeavouring to detect the thieves, merely by the impression left on his mind by this circumstance.

"Within Newgate, amongst the mass of prisoners awaiting their trials, a sentiment of ferocious anger and desperate recklessness was created, such as, if frequently aroused and generally prevalent, would be the cause of innumerable and horrid crimes."

The striking example afforded by a public execution is insisted upon by the advocates of capital punishment, as most beneficial. Let them peruse the following facts:

"Having taken great pains to ascertain the feeling of the mass of spectators at each execution, during the three years to which these pages relate, I am able to assert positively, that, in every case but one (executions for murder inclusive) the assembled crowd sympathised with the criminal, and expressed feelings of compassion towards the dying person, and of hatred towards the law and its principal executioner; the judge of the fourth and fifth trials. The case of exception was that of Esther Hibner, hanged for destroying a parish apprentice by repeated acts of cruelty. On that occasion the assembled crowd shouted bravoes, and clapped their hands as the woman was 'launched into eternity.'* On every other occasion the sympathy and anger of the crowd were expressed by such cries as 'God bless you!' 'Shame, shame!'

"If the late Under Secretary of State for the Home Department assisted at a condemned sermon in Newgate for the purpose of instructing himself, it were to be wished that, with a similar view, he would attend a few executions in front of the gaol. Whoever will undergo the pain of witnessing the public destruction of a fellow-creature's life in London, must be perfectly satisfied, that, in the great mass of spectators, the effect of the punishment is to excite sympathy for the criminal, and hatred of the law.

"From the reports of thieves and other criminals, whom I questioned on this point, not occasionally, but whenever an opportunity occurred during three years, I feel assured that a considerable portion of the crowds which assemble to witness executions in London, consists of thieves. From all I could learn, I am inclined to believe, that the criminals of London, spoken of as a class, and allowing for exceptions, take the same sort of delight in witnessing executions as the sportsman

* A similar spectacle occurred at the execution of Bishop and Williams, in December, 1831, for *burking* an Italian boy. The populace received the prisoners with shouts of exultation, and at the moment of their death gave "three cheers." It is difficult to conceive a scene more dreadful or more disgusting. To feast upon the last agonies of a fellow-creature, however guilty, to enjoy his despair, to add bitterness to the dregs of the fatal cup of which he is about to drink, and to spurn all feelings of mercy, because he has himself shown none—these are the results of such exhibitions, even in their most justifiable shape. What value can the rude and ignorant set upon human blood, when they see it daily poured out like water, and when they behold thousands regarding with satisfaction, nay with delight, the extinction of human life?

and soldier find in the dangers of hunting and war. One would suppose that the practice of crime, as a trade, furnishes, by itself, sufficient excitement; but, perhaps, the state of constant alarm in which criminals live, renders them callous to ordinary excitements, and creates in them an appetite for some excitement, which would be painful, instead of agreeable, to people in general. Be this as it may, nothing can be more sure than that the sight of an execution is considered a treat by most habitual criminals of the metropolis; and that there is hardly a regular thief in London who has not frequently gone out of his way to be present at executions. This statement may be abundantly confirmed by examining the officers of the city police.

"From inquiries made of the boys confined in the school-yard of Newgate; or rather, I ought to say, from having overheard the conversation of the boys amongst themselves, I am satisfied that every public execution *creates* some criminals. Every execution in front of Newgate is attended by some boys not yet criminals, apprentices, errand-boys, and children on their way to and from school; and though, unfortunately, I neglected to keep an account of the number of cases ascertained by myself, I am confident that few Old Bailey Sessions pass without the trial of a boy, whose first thought of crime occurred whilst he was witnessing an execution. Not less, I venture to say, than a dozen boys have assured me that they were led to become thieves by attending executions.

"To some of them the idea occurred simply through witnessing the struggles of a dying thief; to others it was suggested by thieves, with whom they were led to form acquaintance by the excitement of the occasion, and who took advantage of that excitement, to speak, with success, of the enjoyments of a thief, and his many chances of impunity. And one grown man, of great mental powers and superior education, who was acquitted of a charge of forgery, assured me that the first idea of committing a forgery occurred to him at the moment when he was accidentally witnessing the execution of Fautleroy."

It is sometimes urged, as an argument in favour of retaining the punishment of death, that although it may be true that the denunciation of it may have little effect upon the hardened criminal, it can never be known how many of those who are subject to temptation may have been restrained from crime by the wholesome terrors of the halter—

What's done, we partly may compute,
But know not what's resisted.

It would, perhaps, be allowable to answer an argument like this, which is based upon simple assertion, by a simple denial; and to reply, that as it is not proved that the fear of death has operated to deter from crime, in any particular case, we may presume that it is productive of no such effect; while, on the other hand, in the case of every capital conviction, its inefficacy is apparent. But that inefficacy is capable of being shown by much more satisfactory reasoning. Every day's observation must convince us how ready men are to place themselves in situations

where their lives and liberty are in peril; and how lightly, even for the smallest advantage, they will run the risk of much greater danger than a criminal (considering the various chances that exist in his favour) undergoes. Do we not daily see men, with the fullest knowledge of the consequence of their actions, shortening their lives by vice and intemperance? In fact, the idea of death is one which is with difficulty forced upon the attention of men, unless the approach of it be near, and the danger imminent. It is the law of his nature to regard it as the condition of his fate; and the contemplation of it, from its vague certainty, if we may be allowed to use the expression, loses all power of troubling his repose. There can be little doubt, that the same feeling is extended to the death denounced by the law; the idea of which is never, so to speak, *realised* to the mind of the criminal, or of the person about to commit a crime. It cannot be doubted, that there is much truth and nature in the following dialogue between Mr. Wakefield and a prisoner, "who was within an ace of being hanged for coining:"—

"Q. Have you not often seen an execution?—A. Yes, I have, very often.

"Q. Did they not frighten you?—A. No. Why should it?

"Q. Did it not make you think that the same would happen to yourself?—A. Not a bit.

"Q. What did you think then?—A. Think! why I thought it was a — shame!

"Q. Now, when you have been going to run a great risk of being caught and hanged, did the thought never come into your head, that it would be as well to avoid the risk?—A. Never.

"Q. Not when you remembered having seen men hanged for the same thing?—A. Oh! I never remembered any thing about it; and, if I had, what difference would that make? We must all take our chance. I never thought it would fall on me, and I don't think it ever will.

"Q. But if it should?—A. Then I hope I should suffer like a man. Where's the use of snivelling?"

In addition to the "facts relating to the punishment of death," Mr. Wakefield has collected some curious information on collateral subjects; as the "police of prevention," "nurseries of crime," "receivers of stolen goods," "detection," &c.; and he has likewise commented at some length upon the system of appeal, as he terms it, to the King in Council, still pursued in the case of capital convictions at the Old Bailey. In his observations on the "police of prevention," he insists upon the necessity of more efficient arrangements for the purpose of preventing notorious thieves from being at large, and for breaking up the establishments in which criminals are harboured. Speaking of the persons dismissed from Newgate, he says, "If the laws were efficient, all

such persons should be apprehended on leaving the prison, and sent to some penitentiary as notorious thieves. What becomes of them? Leaving the prison, generally penniless, they go straight to their well-known haunts, where, either by notorious thieves like themselves, who as such ought to be in confinement, or by publicans or others, who as harbourers of such thieves ought to be in prison, they are supplied with a loan of money for their direct and immediate wants, and with information as to favourable opportunities of clearing the debt, by means of robbery." But, after all, to what does Mr. Wakefield's scheme amount? The thieves and their patrons may be imprisoned, but they cannot be detained in durance for life; and Mr. Wakefield does not pretend, that, when they are again let loose upon society, they will not again resume their vocation. Measures, to be truly preventive, must go much further than this. The causes of crime are want and ignorance, neither of which can be removed by a six months' imprisonment. Before crime can be prevented, the people must possess the means of maintaining themselves; and must be taught that they will be happier and better when depending upon their own honest industry, than when subsisting by crime. But to such a state of society we can only hope, in this country, to approximate very remotely. Something, however, may still be accomplished, by the reformation of the individual offender; for, notwithstanding the assertion of Mr. Wakefield, that "the number of cases in which man, woman, or child,—once a thief, is always a thief,—are so vague, as to be undeserving of notice," we maintain that reformation is one principal object of criminal legislation. The opinion expressed by Mr. Wakefield, is also contradicted by numerous facts, both in this country and in the United States, to which we shall take an early occasion to refer more particularly.

In connexion with the subject of the Reform of Criminals, we may mention the want of an institution for the reception of offenders, and more especially of juvenile delinquents, on their release from prison. A large proportion of the boys discharged from Newgate, according to Mr. Wakefield, immediately resort to the houses of receivers of stolen goods, or of persons interested in persuading them to resume their predatory occupations. To preserve them from this temptation to crime, until better habits are formed, is an object of the highest importance. It frequently happens, also, that a prisoner, on his discharge, is absolutely destitute of the means of subsistence. Under the pressure of want, it is almost certain that he will again resort to theft, unless some assistance be afforded him for the obtaining of honest employment. Without question, an institution devoted to the protection of these outcasts, would prevent the commission of innumerable second offences.

We have said, that Mr. Wakefield occasionally displays his ignorance, with a very confident air. Let the reader judge. In speaking of receivers of stolen goods, we find the following novel information :—

“ A slight improvement of the law was made by a bill lately introduced by Mr. Peel, which enacted, that any one found in the possession of stolen goods within a fixed period of the time when the goods were stolen, and unable to account for such possession, should be considered as the thief, and liable to the punishment of stealing to the amount of the value of the goods. But that this provision has done little towards diminishing one of the greatest temptations to robbery—the facility of converting stolen goods into money—is proved by this unquestionable fact, that no thief, however young or inexperienced, finds the least difficulty in disposing of stolen goods. This law has the same effect on the receivers, as the establishment of the new police on the thieves. It renders the receiver's trade somewhat more difficult, and obliges him to take new precautions.”

Some further reasoning upon the practical effect of the new law is added. All this is very ingenious, had there been any foundation for it ; but, unfortunately, Mr. Peel never introduced such a bill, nor could it ever have been even contemplated. At common law, the presumption is, that a person found in the possession of property recently stolen, is the thief ; but the idea of such an enactment as that mentioned by Mr. Wakefield could have never occurred to the framers of Mr. Peel's bills. We do not quarrel with Mr. Wakefield for his ignorance of the laws, but we have a right to expect that he will not impose it upon the public as knowledge.

Among the modes suggested by Mr. Wakefield, the following, for the suppressing the offence of receiving stolen goods, appears to us to be, in principle, extremely reprehensible. After recommending the adoption of a better police, he says, “ I venture to suggest, that one officer of such police ought to reside constantly in each of the London prisons, and especially in Newgate, for the purpose of obtaining information on all these points, and exclusively charged with that service. Nothing would create such dismay amongst the criminals, whom it is so desirable to root out of society ; and, I speak of my own experience of the quantity of information that would be obtained in this way, when I express a belief, that such a measure of *espionage* might be made the means of diminishing crime to an extent which I abstain from estimating, for fear of startling those who have never reflected on the importance of measures of prevention.” That a system, the basis of which must be deception, should be favoured by Mr. Wakefield, is not matter of surprise ; but it would be marvellous, if any man of proper feeling and

sound judgment could be found to advocate a measure so entirely opposed to right policy and true principle, as that here recommended. It has ever been the cherished system of the worst governments, in the worst times, and has tended more than any other policy, to debase and to lower the character of nations. Venice and France, in the most degraded periods of their history, were distinguished by the flagrant treachery of their governments; and there are few persons who do not remember, with disgust and abhorrence, the unhappy times, when, for political purposes, similar measures were resorted to in our own country. The results of such a system are what may naturally be expected. Fraud is met by fraud, and deception by deception; the worst means are put in practice, in order to force from the offender the desired information; and at last the spy, whose duty it is to provide the expected number of criminals, is compelled, for his own professional credit, to create the crimes himself. No advantages gained in the detection of offenders can counterbalance the demoralizing influences of such a system.

We have no space for a further examination of Mr. Wakefield's book; which, together with the evidence given by him before the Select Committee of the House of Commons, appointed to report upon the subject of secondary punishments, we recommend to the attention of those whose inquiries are directed to the state of our criminal jurisprudence.

PARLIAMENTARY PAPERS.

No. I.

The following are Summary Statements of the Number of Persons charged with Criminal Offences, who were committed to the different gaols in England and Wales, for trial at the assizes, and sessions, held for the several counties, cities, towns, and liberties therein, during the years 1823-1829 inclusive, distinguishing the number in each year; and showing the nature of the crimes respectively of which they were convicted, acquitted, and with which those were charged, against whom no bills were found, and who were not prosecuted; the sentences of those convicted; and the number executed who received sentence of death:—

Number of Persons charged with Criminal Offences, committed to the different Gaols in England and Wales, for Trial, in each County.

In the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Anglesey	10	9	7	2	16	7	12
Bedford	106	102	123	83	108	109	134
Berks	162	148	154	140	208	190	212
Brecon	11	16	21	14	16	21	17
Bucks	121	143	160	113	182	153	188
Cambridge	155	110	137	142	152	159	194
Cardigan	2	16	4	9	9	9	3
Carmarthen	35	21	28	15	17	40	23
Carnarvon	14	26	15	14	22	18	15
Chester	249	361	306	415	497	466	542
Cornwall	68	83	109	110	130	126	122
Cumberland	38	64	57	54	79	53	47
Denbigh	14	20	26	24	26	34	35
Derby	86	77	84	134	160	171	175
Devon	356	402	437	440	432	425	430
Dorset	135	120	119	138	167	144	141
Durham	71	84	103	117	175	123	139
Essex	*388	*460	*408	*403	*451	*363	*587
Flint	9	6	11	12	22	22	20
Glamorgan	33	43	24	43	54	49	54
Gloucester	264	307	352	427	415	389	440
(Bristol)	142	135	133	158	139	177	171
Hants	260	321	357	285	341	354	396
Hereford	93	99	68	97	150	127	155
Herts	*123	*138	*162	*192	*205	*199	*235
Huntingdon	35	29	31	34	31	19	44
Kent	*504	*617	*577	*632	*632	*604	*665
Lancaster	1,632	1,897	2,132	2,374	2,459	2,011	2,226
Leicester	151	131	148	237	260	247	249
Lincoln	222	226	198	221	329	302	337
Merioneth	4	5	1	2	6	7	3
Middlesex	2,503	2,621	2,902	3,457	3,381	3,516	3,567
Monmouth	30	54	55	60	95	55	109
Montgomery	14	20	36	20	22	17	32
Norfolk	349	399	409	441	486	421	536
Northampton	135	109	129	123	176	122	183
Northumberland	75	89	87	72	96	122	116
Nottingham	196	204	219	287	298	289	358
Oxford	87	147	110	167	210	141	167
Pembroke	17	19	26	20	42	18	21
Radnor	8	13	24	3	15	15	8
Rutland	8	18	7	17	14	16	20
Salop	106	174	126	130	178	168	165
Somerset	380	450	523	490	646	495	674
Stafford	214	263	276	448	569	575	613
Suffolk	299	301	292	293	351	283	357
Surrey	*537	*558	*591	*699	*663	*680	*716
Sussex	*292	*319	*273	*277	*309	*308	*378
Warwick	437	542	482	581	602	608	705
Westmoreland	23	21	16	9	20	19	11
Wills	263	254	314	324	365	281	346
Worcester	173	154	165	169	250	203	282
York	624	753	883	996	1,223	1,094	1,291
Total	12,263	13,698	14,437	16,164	17,921	16,564	18,675

* The prisoners for Trial at the Special Assizes commencing in December, upon the Home Circuit in each year, are included in the numbers in the following Year. The prisoners for Trial at the Assizes commencing in December 1829 are therefore not included herein.

Number of Persons Committed, Convicted, Sentenced, Acquitted, &c. &c.

In the Years . . .	1823.	1824.	1825.	1826.	1827.	1828.	1829.	Total Number in the 7 Years.
Committed for Trial :—								
Viz. Males . . .	10,342	11,475	11,889	13,472	15,151	13,832	15,556	91,717
Females . . .	1,921	2,223	2,548	2,692	2,770	2,732	3,119	18,005
Total . . .	12,263	13,698	14,437	16,164	17,921	16,564	18,675	109,722
Convicted and Sentenced :—								
To Death* . . .	*968	*1,066	*1,036	*1,203	*1,526	*1,165	*1,385	*8,349
Transportation, for Life	116	117	126	133	198	317	396	1,403
— 35 Years	—	—	—	—	—	—	1	1
— 28 Years	—	—	—	—	1	1	—	2
— 21 Years	—	—	—	—	1	—	2	3
— 14 Years	78	107	129	185	293	508	691	1,991
— 10 Years	—	—	—	—	—	1	—	1
— 7 Years	1,327	1,491	1,419	1,945	2,232	2,046	2,285	12,745
— 4 Years	—	1	—	—	—	—	—	1
Imprisonment, and severally to be Whipped, Fined, kept to Hard Labour, &c.								
{ 5 Years . . .	—	—	—	—	1	—	—	1
{ 4 Years . . .	—	—	—	—	—	1	—	1
{ 3 Years . . .	11	11	7	11	11	11	7	69
{ 2 Years, and above one Year } . . .	324	339	365	297	296	243	235	2,099
{ 1 Year, and above six Months } . . .	1,074	1,218	1,193	1,204	1,433	1,117	1,277	8,516
{ 6 Months and under . . . } . . .	4,040	4,861	5,408	5,819	6,251	5,991	6,646	39,016
Whipping and Fine . . .	266	214	281	310	321	322	336	2,050
Total Convicted . . .	8,204	9,425	9,964	11,107	12,564	11,723	13,261	76,248
Acquitted . . .	2,480	2,611	2,788	3,271	3,407	3,169	3,614	21,340
No Bills found, and not Prosecuted . . .	1,579	1,662	1,685	1,786	1,950	1,672	1,800	12,134
Total . . .	12,263	13,698	14,437	16,164	17,921	16,564	18,675	109,722
* Of whom were Executed	*54	*49	*50	*57	*70	*79	*74	433

* See pages 127 and 138 for their Crimes and also for the Number Executed.

Number of Persons Convicted.

Nature of the Crimes of which Persons were Convicted in the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	6	6	7	3	3	2	8
Bigamy	19	22	25	35	23	38	31
Burglary	261	302	276	311	368	171	108
Breaking into a Dwelling-house and Larceny	124	128	112	125	240	350	561
Breaking into a Building, Shop, &c. (not communicating with Dwelling-house), and Larceny	—	—	—	—	—	151	164
Cattle Stealing	24	19	24	21	31	28	25
Cattle, Feloniously Killing and Maiming	—	2	—	—	1	2	2
Child Stealing	1	—	3	1	5	3	3
Coining	1	2	1	7	14	6	—
Coin Counterfeit, Putting off, Uttering, and Having, &c.	175	206	176	210	223	205	256
Embezzlement (by Servants)	64	71	70	91	101	135	130
Forgery, and Uttering Forged Instruments	29	22	18	23	46	42	37
Forged Bank Notes, Having in Possession, &c.	—	—	—	4	—	—	1
Fraudulent Offences	147	142	176	157	206	215	282
Game Laws, Offences against	153	140	109	128	212	306	174
Horse Stealing	134	104	165	121	147	138	147
Larceny (not otherwise described)	5,917	6,914	7,293	8,089	8,858	8,109	9,444
Larceny in a Dwelling-house, &c.	145	188	186	222	223	74	81
Larceny in a Shop, &c.	1	2	—	—	—	—	—
Larceny from the Person	329	446	532	658	722	682	724
Letters, containing Bank Notes, &c. Secreting and Stealing	—	1	2	—	3	1	—
Letters, sending Threatening	—	2	—	2	—	1	2
Manlaughter	53	50	62	62	83	72	56
Murder	12	17	12	13	12	20	13
Murder, Shooting at, Stabbing, Wounding, and Administering Poison, with intent to Murder, &c.	14	21	17	14	35	20	65
Murder, Concealing the Birth of their Infants	9	6	7	7	5	5	23
Perjury	4	3	7	6	6	7	4
Piracy	—	—	2	—	—	—	—
Rape, &c.	11	9	6	4	11	5	7
Rape, Assault with intent to commit	46	43	42	83	64	78	69
Riot and Felony	—	—	—	48	—	2	—
Robbery of the Person, on the Highway, and other Places	113	124	93	144	201	155	147
Sacrilege	4	4	1	4	8	7	11
Sheep Stealing, and Killing with intent to Steal	79	105	104	127	153	120	155
Sodomy	3	1	2	1	1	2	1
Sodomy, Assault with intent to commit, and other Unnatural Offences	27	15	25	20	23	27	14
Stolen Goods, Receiving	117	184	131	157	235	229	277
Transports being at large, &c.	4	3	4	12	12	7	8
Felony, Cutting down Trees growing, &c.	1	—	—	—	—	—	—
Felony, Stealing Part of a Wreck	1	—	—	—	—	—	—
Felony, Armed to assist Smugglers, &c.	—	1	2	1	16	11	—
Felony and Misdemeanor (not otherwise described)	116	120	272	196	273	207	231
Total Number of Persons Convicted in each Year	8,204	9,425	9,964	11,107	12,564	11,723	13,261

Number of Persons Acquitted.

Nature of the Crimes for which Persons were Tried and Ac- quitted in the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	11	14	8	8	6	4	15
Bigamy	6	3	7	5	5	6	7
Burglary	99	88	101	115	136	45	35
Breaking into a Dwelling-house, and Larceny	26	33	27	27	44	102	107
Breaking into a Building, Shop, &c. (not communicating with Dwelling- house), and Larceny	—	—	—	—	—	35	25
Cattle Stealing	3	4	10	2	10	8	4
Cattle, Feloniously Killing and Maiming	2	1	2	5	3	7	1
Child Stealing	—	1	1	1	3	1	1
Coining	2	—	2	—	7	2	1
Coin Counterfeit, Putting off, Utter- ing, and Having, &c.	28	41	19	48	28	30	33
Embezzlement (by Servants)	23	36	26	39	39	47	35
Forgery, and Uttering Forged In- struments.	14	11	11	14	32	18	14
Forged Bank Notes, Having in Possession, &c.	—	—	—	1	1	—	—
Fraudulent Offences	52	50	51	44	76	71	79
Game Laws, Offences against	43	18	31	34	53	31	42
Horse Stealing	30	32	49	36	60	32	27
Larceny (not otherwise described)	1,498	1,580	1,727	1,918	1,969	1,768	2,036
Larceny in a Dwelling-house, &c.	40	54	46	59	52	33	31
Larceny from the Person	108	125	173	236	203	232	236
Letters, containing Bank Notes, &c. Secreting and Stealing	—	—	—	1	3	2	—
Letters, sending Threatening	—	4	4	—	3	2	2
Manslaughter	54	49	56	71	53	54	66
Murder	35	28	61	32	34	48	27
Murder, Shooting at, Stabbing, Wounding, and Administering Poison, with intent to Murder, &c.	29	35	29	26	29	41	39
Murder, Concealing the Birth of their Infants	—	—	—	1	—	—	9
Perjury	3	1	3	7	9	8	6
Piracy	25	—	—	—	—	—	47
Rape, &c.	22	16	20	14	20	23	30
Rape, Assault with intent to commit Riot and Felony	20	12	17	16	27	31	25
Robbery of the Person, on the High- way, and other Places	64	108	78	130	115	128	113
Sacrilege	4	1	—	—	2	2	2
Sheep Stealing, and Killing with intent to Steal	23	32	41	40	60	57	63
Sodomy	6	9	4	3	7	3	6
Sodomy, Assault with intent to com- mit, and other Unnatural Offences	7	4	10	11	13	10	8
Stolen Goods, Receiving	141	156	113	193	205	191	265
Transports being at large, &c.	—	—	—	—	1	—	—
Felony, Cutting down Trees, growing, &c.	3	—	—	—	—	—	—
Felony and Misdemeanor (not other- wise described)	59	65	61	122	99	92	114
Total Number of Persons Acquitted in each Year	2,480	2,611	2,788	3,271	3,407	3,169	3,614

Number of Persons against whom No Bills found, and Not Prosecuted.

Nature of the Crimes with which Persons were charged, against whom No Bills were found, and who were Not Prosecuted, in	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	11	8	7	6	5	8	14
Bigamy	3	6	1	2	1	2	—
Burglary	42	70	51	52	68	33	28
Breaking into a Dwelling-house, and Larceny	20	15	11	16	16	39	53
Breaking into a Building, Shop, &c. (not communicating with Dwelling- house), and Larceny	—	—	—	—	—	9	12
Cattle Stealing	2	—	8	1	4	2	1
Cattle, Feloniously Killing and Maiming	—	1	7	6	4	2	—
Child Stealing	1	—	—	—	1	—	—
Coining	—	—	—	1	—	2	—
Coin Counterfeit, Putting off, Utter- ing, and Having, &c.	27	20	15	25	29	26	24
Embezzlement (by Servants)	10	9	9	13	13	13	15
Forgery, and Uttering Forged In- struments	10	1	7	10	13	6	5
Fraudulent Offences	38	47	75	78	50	24	44
Game Laws, Offences against	27	20	11	20	19	29	14
Horse Stealing	15	14	15	14	22	10	10
Larceny (not otherwise described)	1,002	1,060	1,067	1,115	1,187	1,022	1,148
Larceny in a Dwelling-house, &c.	26	33	33	19	20	15	7
Larceny from the Person	113	124	130	161	156	165	178
Letters, sending Threatening	1	1	1	1	—	—	—
Manlaughter	9	10	4	8	5	16	3
Murder	13	23	21	12	19	15	7
Murder, Shooting at, Stabbing, Wounding, and Administering Poison, with intent to Murder, &c.	20	15	11	7	18	11	11
Murder, Concealing the Birth of their Infants	2	—	1	—	—	—	3
Perjury	1	1	1	1	1	1	—
Rape, &c.	15	21	17	11	17	13	17
Rape, Assault with intent to commit	11	14	6	18	20	19	14
Riot and Felony	—	—	—	2	—	—	—
Robbery of the Person, on the High- way, and other Places	24	26	18	33	65	31	39
Sacrilege	—	1	1	—	—	3	3
Sheep Stealing, and Killing with intent to Steal	28	18	21	23	35	22	19
Sodomy	9	3	3	—	6	7	3
Sodomy, Assault with intent to com- mit, and other Unnatural Offences	10	8	5	4	9	23	13
Stolen Goods, Receiving	41	48	45	56	91	43	69
Transports being at large, &c.	—	1	—	—	—	—	—
Felony and Misdemeanor (not other- wise described)	48	39	83	71	56	61	46
Total Number of Persons against whom No Bills were found, and who were not prosecuted, in each Year	1,579	1,662	1,685	1,786	1,950	1,672	1,800

Total Number of Persons Committed, Convicted, Sentenced, Acquitted, &c. &c.

Nature of Crimes with which Persons were charged in the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	28	28	22	17	14	14	37
Bigamy	28	31	33	42	29	46	38
Burglary	402	460	428	478	572	249	171
Breaking into a Dwelling-house, and Larceny	170	176	150	168	300	491	781
Breaking into a Building, Shop, &c. (not communicating with Dwelling-house), and Larceny	—	—	—	—	—	195	204
Cattle Stealing	29	23	42	24	45	38	30
Cattle, Feloniously Killing and Maiming	2	4	9	11	8	11	3
Child Stealing	2	1	4	2	9	4	4
Coining	3	2	8	8	21	10	1
Coin Counterfeit, Putting off, Uttering, and Having, &c.	230	267	210	283	280	261	319
Embezzlement (by Servants)	97	116	105	149	153	195	180
Forgery, and Uttering Forged Instruments	53	34	36	47	91	66	56
Forged Bank Notes, Having in Possession, &c.	—	—	—	5	1	—	1
Fraudulent Offences	237	239	302	279	332	310	405
Game Laws, Offences against	223	178	151	182	284	366	230
Horse Stealing	179	150	229	171	229	180	184
Larceny (not otherwise described)	8,477	9,554	10,087	11,122	12,014	10,989	12,628
Larceny in a Dwelling-house, &c.	211	275	265	300	295	122	119
Larceny in a Shop, &c.	1	2	—	—	—	—	—
Larceny from the Person	550	695	835	1,055	1,081	1,079	1,138
Letters, containing Bank Notes, &c. Secreting and Stealing	—	1	2	1	6	3	—
Letters, sending Threatening	1	7	5	3	3	3	4
Manslaughter	116	109	122	141	141	142	125
Murder	60	73	94	57	65	83	47
Murder, Shooting at, Stabbing, Wounding, and Administering Poison, with intent to Murder, &c.	63	71	57	47	82	72	115
Murder, Concealing the Birth of their Infants	11	6	8	8	5	5	35
Perjury	8	5	11	14	16	16	10
Piracy	25	—	2	—	—	—	47
Rape, &c.	48	46	43	29	48	41	54
Rape, Assault with intent to commit	77	69	65	117	111	128	108
Riot and Felony	—	—	—	62	—	7	—
Robbery of the Person, on the Highway, and other Places	201	258	189	307	381	314	299
Sacrilege	8	6	2	4	10	12	16
Sheep Stealing, and Killing with intent to Steal	130	155	166	190	248	199	237
Sodomy	18	13	9	4	14	12	10
Sodomy, Assault with intent to commit, and other Unnatural Offences	44	27	40	35	45	60	35
Stolen Goods, Receiving	299	388	289	406	531	463	611
Transports, being at large, &c.	4	4	4	12	13	7	8
Felony, Stealing Part of a Wreck	1	—	—	—	—	—	—
Felony, Armed to assist Smugglers, &c.	—	1	2	1	16	11	—
Felony, Cutting down Trees, growing, &c.	4	—	—	—	—	—	—
Felony and Misdemeanor (not otherwise described)	223	224	416	389	428	360	391
Total Number of Persons for Trial in each Year	12,263	13,698	14,437	16,164	17,921	16,564	18,675

Number of Persons sentenced to Death.

Crimes for which Persons received Sentence of Death in the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.	Total Number in the 7 Years.
Arson, and other wilful Burning of Property	6	6	7	3	3	2	8	35
Burglary	261	302	276	311	368	171	108	1,797
Breaking into a Dwelling- house, and Larceny	124	128	112	125	240	350	561	1,640
Cattle Stealing	24	19	24	21	31	28	25	172
Cattle, Feloniously Killing and Maiming	—	2	—	—	1	—	2	5
Coining	1	2	1	7	14	6	—	31
Coin, Uttering Counterfeit (having been convicted as Common Utterers)	1	2	2	1	1	4	9	20
Forgery, and Uttering Forged Instruments	29	22	18	23	46	42	37	217
Horse Stealing	134	104	165	121	147	138	147	956
Larceny, Grand	—	1	—	1	—	—	—	2
Larceny in a Dwelling-house, &c.	145	188	196	222	223	74	81	1,119
Larceny in a Shop, &c.	1	2	—	—	—	—	—	3
Letters, containing Bank Notes, &c. Secreting and Stealing	—	1	2	—	3	1	—	7
Letters, sending Threatening Murder	—	2	—	—	—	—	—	2
Murder	12	17	12	13	12	20	13	99
Murder, Shooting at, Stabbing, Wounding, and Adminis- tering Poison, with intent to Murder, &c.	14	21	17	14	35	20	65	186
Piracy	—	—	2	—	—	—	—	2
Rape, &c.	11	9	6	4	11	5	7	53
Riot and Felony	—	—	—	48	—	2	—	50
Robbery of the Person, on the Highway, and other Places	113	124	93	144	201	155	147	977
Sacrilege	4	4	1	4	8	7	11	39
Sheep Stealing, and Killing with intent to Steal	79	105	104	127	153	120	155	843
Sodomy	3	1	2	1	1	2	1	11
Transports being at large, &c.	4	3	4	12	12	7	8	50
Felony, Stealing Part of a Wreck	1	—	—	—	—	—	—	1
Felony, Cutting down Trees growing, &c.	1	—	—	—	—	—	—	1
Felony, Assembling Armed to assist Smugglers, &c.	—	1	2	1	16	11	—	31
Total Number of Persons who received Sentence of Death in each Year	968	1,066	1,036	1,203	1,526	1,165	1,385	8,349

Number of Persons Executed.

Crimes for which Persons were executed who received Sentence of Death in the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.	Total Number in the 7 Years.
Arson, and other wilful Burning of Property	—	1	1	1	—	—	3	6
Burglary	11	13	12	10	10	4	4	64
Breaking into a Dwelling- house, and Larceny	1	—	—	—	—	19	10	30
Coining	1	1	—	1	4	4	—	11
Forgery, and Uttering Forged Instruments	2	3	1	1	4	6	7	24
Horse Stealing	4	1	8	7	9	7	6	42
Larceny in a Dwelling-house, &c.	3	1	2	5	4	2	1	18
Letters, containing Bank Notes, Secreting and Steal- ing	—	—	1	—	1	—	—	2
Murder	11	15	10	10	11	18	13	88
Murder, Shooting at, Stabbing, Wounding, and adminis- tering Poison, with intent to Murder, &c.	5	3	1	1	5	7	10	32
Rape, &c.	8	3	3	2	2	3	3	24
Robbery of the Person, on the Highway, and other Places	5	6	6	15	17	8	12	69
Slight Stealing	—	1	3	3	3	1	5	16
Sodomy	3	1	2	1	—	—	—	7
Total Number of Persons Executed in each Year	54	49	50	57	70	79	74	433

No. II.

The following are Summary Statements of the Number of Persons charged with Criminal Offences, who were committed to the several gaols in the cities of London and Westminster, and county of Middlesex for trial, during the years 1823-1829 inclusive, distinguishing the number in each year; and showing the nature

of the crimes respectively of which they were convicted, acquitted, and with which those were charged against whom no bills were found, and who were not prosecuted; the sentences of those convicted; and the number executed who received sentence of death:—

Number of Persons Committed, Convicted, Sentenced, Acquitted, &c. &c. in London and Middlesex.

In the Years . . .	1823.	1824.	1825.	1826.	1827.	1828.	1829.	Total Number in the 7 Years.
Committed for Trial:—								
Viz. Males . . .	1,955	2,043	2,223	2,734	2,719	2,767	2,763	17,208
Females . . .	548	579	674	723	662	749	804	4,739
Total .	2,503	2,621	2,902	3,457	3,381	3,516	3,567	21,947
Convicted and Sentenced:—								
To Death* . . .	124*	149*	168*	204*	214*	175*	131*	1,165*
Transportation, for Life	70	63	86	65	85	80	104	553
———— 14 Years	36	30	45	96	126	151	162	646
———— 7 Years	317	421	442	671	645	643	736	3,875
Imprisonment, and severally to be Whipped, Fined, kept to Hard Labour, &c.	3 Years . . .	—	—	2	1	—	3	6
	2 Years, and above 1 Year } . . .	17	7	23	14	27	30	135
	1 Year, and above 6 Months } . . .	116	110	111	92	106	67	686
	6 Months and under } . . .	603	790	852	874	925	949	5,876
Whipping . . .	28	31	85	85	81	80	99	489
Fine . . .	144	92	85	117	90	102	99	729
Total Convicted .	1,455	1,693	1,897	2,220	2,300	2,277	2,318	14,160
Acquitted . . .	683	616	687	846	702	850	804	5,188
No Bills found, and Not Prosecuted .	365	312	318	391	379	389	445	2,599
Total .	2,503	2,621	2,902	3,457	3,381	3,516	3,567	21,947
* Of whom were Executed	11*	12*	16*	20*	17*	21*	25*	122*

* See pages 144 and 145 for their Crimes, and also for the Number Executed.

Total Number of Persons Convicted.

Nature of the Crimes of which Persons were Convicted in . . }	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	—	1	—	1	—	—	1
Bigamy	5	3	5	9	2	17	6
Burglary	33	31	40	37	33	14	7
Breaking into a Dwelling-house, and Larceny	12	10	15	20	28	59	40
Breaking into a Building, Shop, &c. (not communicating with Dwelling- house), and Larceny	—	—	—	—	—	5	7
Cattle Stealing	—	1	—	2	3	3	2
Child Stealing	—	—	—	—	—	—	1
Coining	—	—	—	3	6	3	—
Coin Counterfeit, Putting off, Utter- ing, and Having, &c.	47	46	76	45	46	42	79
Embezzlement (by Servants)	25	21	28	35	47	48	33
Forgery, and Uttering Forged In- struments	4	7	1	1	5	10	12
Fraudulent Offences	20	36	55	38	47	45	58
Game Laws, Offences against	—	—	—	1	—	2	—
Horse Stealing	7	5	12	13	16	12	3
Larceny (not otherwise described)	984	1,174	1,215	1,495	1,502	1,524	1,594
Larceny in a Dwelling-house, &c.	47	75	77	73	68	26	30
Larceny from the Person	181	218	274	313	340	325	321
Letters, containing Bank Notes, &c. Secreting and Stealing	—	1	1	—	2	—	—
Letters, sending Threatening	—	—	—	1	—	1	1
Manslaughter	16	2	14	9	14	9	5
Murder	—	1	1	1	1	1	1
Murder, Shooting at, Stabbing, and Administering Poison, with intent to Murder, &c.	5	5	2	—	1	5	1
Murder, attempting to Strangle an Infant	—	—	—	—	—	—	1
Murder, Concealing the Birth of their Infants	—	—	—	—	—	—	4
Perjury	2	1	2	2	4	2	—
Piracy	—	—	2	—	—	—	—
Rape, &c.	—	—	1	1	1	—	2
Rape, Assault with intent to commit Robbery of the Person, on the High- way, and other Places	8	4	3	8	11	9	9
Robbery of the Person, on the High- way, and other Places	13	10	12	36	39	23	18
Sheep Stealing, and Killing with in- tent to Steal	1	—	2	7	5	2	5
Sodomy	—	—	—	—	—	2	—
Sodomy, Assault with intent to com- mit, and other Unnatural Offences	8	6	14	3	9	14	6
Stolen Goods, Receiving	18	16	21	21	34	22	24
Transports, being at large, &c.	2	1	1	8	5	2	3
Felony, Assembling Armed to assist Smugglers, &c.	—	—	—	—	—	11	—
Felony and Misdemeanor, (not other- wise described)	17	18	23	37	31	39	44
Total Number of Persons Con- victed in each year	1,455	1,693	1,897	2,220	2,300	2,277	2,318

Number of Persons Acquitted in London and Middlesex.

Nature of the Crimes for which Persons were Tried and Ac- quitted in the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	1	4	—	—	—	1	1
Bigamy	1	—	4	2	—	5	5
Burglary	22	23	22	24	21	4	3
Breaking into a Dwelling-house, and Larceny	3	5	8	8	5	34	37
Breaking into a Building, Shop, &c. (not communicating with Dwelling- house), and Larceny	—	—	—	—	—	2	7
Cattle Stealing	1	1	1	—	4	—	—
Child Stealing	—	1	1	—	—	—	—
Coining	—	—	—	—	5	1	1
Coin Counterfeit, Putting off, Utter- ing, and Having, &c.	8	8	7	14	7	7	7
Embezzlement (by Servants)	8	16	10	16	11	19	11
Forgery, and Uttering Forged In- struments.	3	5	2	3	9	4	6
Fraudulent Offences	19	16	20	17	22	13	26
Horse Stealing	2	11	9	1	10	11	2
Larceny (not otherwise described)	371	326	363	428	345	454	398
Larceny in a Dwelling-house, &c.	25	36	22	29	25	21	20
Larceny from the Person	82	83	125	124	108	109	97
Letters, containing Bank Notes, &c. Secreting and Stealing	—	—	—	1	1	1	—
Manlaughter	8	5	4	14	5	12	8
Murder	4	7	14	22	5	10	7
Murder, Shooting at, Stabbing, Wounding, and Administering Poison, with intent to Murder, &c.	6	3	5	8	5	11	6
Perjury	1	—	—	5	4	6	2
Piracy	25	—	—	—	—	—	47
Rape, &c.	6	1	5	3	4	2	4
Rape, Assault with intent to commit	4	—	5	3	4	3	8
Robbery of the Person, on the High- way, and other Places	12	14	22	51	27	46	25
Sheep Stealing, and Killing with intent to Steal	1	—	—	3	3	5	1
Sodomy	2	—	2	1	2	—	—
Sodomy, Assault with intent to com- mit, and other Unnatural Offences	1	2	3	4	9	4	4
Stolen Goods, Receiving	45	38	24	31	43	37	50
Felony and Misdemeanor (not other- wise described)	22	11	9	34	18	28	21
Total Number of Persons Acquitted } in each Year	683	616	687	846	02	850	804

Number of Persons against whom No Bills found, and not Prosecuted.

Nature of the Crimes with which Persons were charged against whom No Bills were found, and who were Not Prosecuted, in	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	1	1	—	—	—	1	—
Bigamy	2	1	—	1	1	—	—
Burglary	3	4	3	5	4	2	—
Breaking into a Dwelling House, and Larceny	—	1	—	—	2	9	9
Coining	—	—	—	—	—	2	—
Coin Counterfeit, Putting off, Utter- ing, and Having, &c.	7	8	4	3	2	2	4
Embezzlement (by Servants)	1	4	3	6	1	2	7
Forgery, and Uttering Forged In- struments	1	1	2	—	1	1	2
Fraudulent Offences	13	12	11	21	7	4	20
Horse Stealing	1	—	1	1	3	1	—
Larceny (not otherwise described)	205	166	166	195	219	202	257
Larceny, in a Dwelling House, &c.	15	12	13	8	7	11	5
Larceny, from the Person	82	81	72	89	83	105	95
Manlaughter	1	—	1	—	1	—	—
Murder	2	1	1	—	—	1	—
Murder, Shooting at, Stabbing, Wounding, and Administering Poison, with intent to Murder, &c.	—	—	—	2	1	1	1
Murder, Concealing the Birth of her Infant	—	—	—	—	—	—	1
Perjury	—	—	—	—	1	1	—
Rape, &c.	—	1	1	—	—	1	3
Rape, Assault with intent to commit Robbery of the Person, on the Highway, and other Places	3	—	—	3	2	3	1
Sheep Stealing, and Killing with intent to Steal	1	3	6	17	8	7	11
Sodomy	—	—	—	1	1	—	—
Sodomy, Assault with intent to com- mit, and other Unnatural Offences	3	—	—	—	—	1	—
Stolen Goods, Receiving	6	2	2	1	3	10	6
Felony, and Misdemeanor (not other- wise described)	7	5	10	11	13	6	7
Total Number of Persons against whom No Bills were found, and who were Not Prosecuted, in each Year	11	9	22	27	19	16	16
	365	312	8	391	379	389	445

Total Number of Persons Committed.

Nature of the Crimes with which Persons were charged in . . . }	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Arson, and other wilful Burning of Property	2	6	—	1	—	2	2
Bigamy	8	4	9	12	3	23	11
Burglary	58	58	65	66	38	20	10
Breaking into a Dwelling-house, and Larceny	15	16	23	28	35	102	86
Breaking into a Building, Shop, &c. (not communicating with Dwelling- house), and Larceny	—	—	—	—	—	7	14
Cattle Stealing	1	2	1	2	7	3	2
Child Stealing	—	1	1	—	—	—	1
Coining	—	—	—	3	11	6	1
Coin Counterfeit, Putting off, Utter- ing, and Having, &c.	62	62	87	62	55	51	90
Embezzlement (by Servants)	34	41	41	57	59	69	51
Forgery, and Uttering Forged In- struments	8	13	5	4	15	15	20
Fraudulent Offences	52	64	86	76	76	62	104
Game Laws, Offences against	—	—	—	1	—	2	—
Horse Stealing	10	16	22	15	29	24	5
Larceny (not otherwise described) . .	1,560	1,666	1,744	2,118	2,066	2,180	2,249
Larceny in a Dwelling-house, &c. . .	87	123	112	110	100	58	55
Larceny from the Person	345	382	471	526	531	539	513
Letters, containing Bank Notes, &c. Secreting and Stealing	—	1	1	1	3	1	—
Letters, sending Threatening	—	—	—	1	—	1	1
Manslaughter	25	7	19	23	20	21	13
Murder	6	9	16	23	6	12	8
Murder, Shooting at, Stabbing, Wounding, and Administering Poison, with intent to Murder, &c. .	11	8	7	10	7	17	8
Murder, attempting to Strangle an Infant	—	—	—	—	—	—	1
Murder, Concealing the Birth of their Infants	—	—	—	—	—	—	5
Perjury	3	1	2	7	9	9	2
Piracy	25	—	2	—	—	—	47
Rape, &c.	6	2	7	4	5	3	9
Rape, Assault with intent to commit Robbery of the Person, on the High- way, and other Places	15	4	8	14	17	15	18
Robbery of the Person, on the High- way, and other Places	26	27	40	104	74	76	54
Sheep Stealing, and Killing with in- tent to Steal	2	—	2	11	9	7	6
Sodomy	5	—	2	1	2	3	—
Sodomy, Assault with intent to com- mit, and other Unnatural Offences . .	15	10	19	8	21	28	16
Stolen Goods, Receiving	70	59	55	63	90	65	81
Transports, being at large, &c. . . .	2	1	1	8	5	2	3
Felony, Assembling Armed to assist Smugglers, &c.	—	—	—	—	—	11	—
Felony and Misdemeanor, (not other- wise described)	50	38	54	98	68	83	81
Total Number of Persons for Trial in each year	2,503	2,621	2,902	3,457	3,381	3,516	3,567

Number of Persons Sentenced to Death.

Crimes for which Persons received Sentence of Death in the Years	1823.	1824.	1825.	1826.	1827.	1828.	1829.	Total Number in the 7 Years.
Arson	—	1	—	1	—	—	1	3
Burglary	33	31	40	37	33	14	7	195
Breaking into a Dwelling- house, and Larceny . .	12	10	15	20	28	59	40	184
Cattle Stealing . . .	—	1	—	2	3	3	2	11
Coining	—	—	—	3	6	3	—	12
Coin, Uttering Counterfeit, (having been convicted as Common Utters) . .	—	1	1	1	1	2	5	11
Forgery, and Uttering Forged Instruments . . .	4	7	1	1	5	10	12	40
Horse Stealing . . .	7	5	12	13	16	12	3	68
Larceny in a Dwelling-house, &c.	47	75	77	73	68	26	30	396
Letters, containing Bank Notes, Secreting and Steal- ing	—	1	1	—	2	—	—	4
Murder	—	1	1	1	1	1	1	6
Murder, Shooting at, Stab- bing, and Administering Poison, with intent to Murder, &c. . . .	5	5	2	—	1	5	1	19
Murder, Attempting to strangle an Infant	—	—	—	—	—	—	1	1
Piracy	—	—	2	—	—	—	—	2
Rape, &c.	—	—	1	1	1	—	2	5
Robbery of the Person, on the Highway, and other Places	13	10	12	36	39	23	18	151
Sheep Stealing, and Killing with intent to Steal .	1	—	2	7	5	2	5	22
Sodomy	—	—	—	—	—	2	—	2
Transports, being at large, &c.	2	1	1	8	5	2	3	22
Felony, Assembling Armed to assist Smugglers .	—	—	—	—	—	11	—	11
Total Number of Persons who received Sentence of Death in each Year	124	149	168	204	214	175	131	1,165

Number of Persons Executed in London and Middlesex.

Crimes for which Persons were executed, who re- ceived Sentence of Death, in the Years . . .	1823.	1824.	1825.	1826.	1827.	1828.	1829.	Total Number in the 7 Years.
Arson	—	—	—	1	—	—	1	2
Burglary	5	3	6	1	2	1	2	20
Breaking into a Dwelling- house, and Larceny . . .	—	—	—	—	—	8	6	14
Coining	—	—	—	—	2	2	—	4
Forgery, and Uttering Forged Instruments	2	3	1	1	—	2	6	15
House Stealing	—	—	4	1	3	1	—	9
Larceny in a Dwelling-house, &c.	1	1	2	5	3	1	1	14
Letters, containing Bank Notes, Secreting and Steal- ing	—	—	1	—	1	—	—	2
Murder	—	1	1	1	1	1	1	6
Murder, Shooting at, Stab- bing, and Administering Poison, with intent to Murder, &c.	2	2	—	—	—	2	1	7
Murder, Attempting to stran- gle an Infant	—	—	—	—	—	—	1	1
Robbery of the Person, on the Highway, and other Places	1	2	—	7	4	3	5	22
Rape	—	—	1	1	—	—	—	2
Sheep Stealing	—	—	—	2	1	—	1	4
Total Number of Persons Executed in each Year. }	11	12	16	20	17	21	25	122

EXTRACTS FROM THE REPORT OF THE KEEPER OF THE STATE
PRISON AT AUBURN.—U.S.

We are extremely anxious to present to our readers the singularly valuable information which is to be found in the reports made to the legislature of the United States by the agents and

keepers of the state prisons, or penitentiaries, in that country. In an early number we shall take an opportunity of noticing the latest of these reports; but there is so much practical information contained in the following extract from the report made in the year 1828, by Mr. Gershom Powers, the keeper of the prison at Auburn, in the state of New York, that we are induced to give it in this place. The care and labour expended (as will appear from the Table) in obtaining intelligence with regard to the characters of those who have been discharged from the penitentiaries, are highly creditable to the functionaries employed.

Reformation of Convicts.

"It is believed that very erroneous opinions are entertained on this subject; and they, doubtless, have arisen chiefly from the failure of success which has attended the old mode of discipline, which has been practised in prisons without a separation of the convicts.

"The frequency and principal cause of re-convictions in other prisons, will very forcibly appear from the following extracts from the report of the Prison Discipline Society, before quoted:

"The correctness of these opinions, in relation to the evils arising from a crowded state of the night-rooms, is supported by a comparative view of the penitentiaries in the United States, in regard to the re-commitment of convicts, where the night-rooms are crowded, and where they are not.

"In the New-Hampshire penitentiary, the whole number of prisoners received from November 23, 1812, to September 28, 1825, was two hundred and fifty-seven; of whom eleven only were committed a second time.

"Twenty-one have been pardoned; of whom only one has been guilty of a second offence.

"The number of prisoners, September 22, 1825, was sixty-six; of whom only three were for a second offence, and none for a third.

"In this prison, from two to six are lodged together; generally, however, not more than two.

"In Connecticut, of 117 convicts in prison, February, 1825, twenty-six were committed for second, third, and fourth offences. In the penitentiary in New-York city, the number of females in November, 1825, was sixty-six; of whom twenty were committed a second time; six, a third; two a fourth; and one, a fifth.

"Here they are lodged ten and twelve in a room.

"In the state prison in New-York city, in 1802, out of one hundred and ninety-one convicts received, forty-four were committed a second time; and two, a third.

"The whole number of re-commitments to that prison, for a second offence, is four hundred and ninety-four; for a third or more offences, sixty-one; and the number pardoned, after having been convicted two, three, or more times, is one hundred and eight.

"In this prison, the average number in the night-rooms is twelve.

“ ‘In the Philadelphia penitentiary, the number of prisoners, August 24, 1819, was four hundred and sixteen ; of whom seventy-three had been twice convicted ; twenty-five, three times ; seven, four times ; and two, five times.

“ ‘In the female department, the number of convicts was sixty-three ; of whom seventeen had been convicted twice ; and two, three times.

“ ‘Of the whole number of convicts in this prison, from 1810 to 1819, four hundred and nine had been convicted twice ; fifty-four three times ; and two, six times.

“ ‘Of four hundred and fifty-one convicts in this penitentiary in 1817, one hundred and sixty-two had been before committed or pardoned.

“ ‘In this prison, twenty-nine, thirty, and thirty-one, are lodged in most of the night-rooms.

“ ‘In the Massachusetts penitentiary, in 1817, out of three hundred convicts then in prison, ninety were under commitment for the second, third, or fourth time.

“ ‘In this prison, from four to sixteen are lodged in each of the night-rooms.’

“ But in an institution where effective discipline is connected with an effectual separation of the convicts ; where those convicts are allowed salutary exercise of body and mind, under proper restraints ; where the ignorant are instructed, and the intelligent subdued ; where every privilege, deprivation, and movement, tends to produce a moral action upon the mind, and to soften the feelings and affections ; where the reproofs, sanctions, and consolations of religion are daily administered, and especially on the Sabbath ; and where the resident chaplain and principal officer habitually visit their solitary cells, and personally admonish with kindness and pungency ; what cheerful hopes may not the christian, the philanthropist, and the statesman, indulge ?

“ Let it not be understood that we expect that all, or nearly all, who are or may be confined in this prison, will be reformed. Such an event can by no means be calculated upon by any man in his sober senses. There always will be many, who, previous to their confinement, had become so hardened in villainy, so lost to all that is decent and good, and so insensible to moral obligation, that no rational hope of their being essentially benefitted, by any course of discipline, can be entertained, except what may arise from the interposition of a divine agency.

“ There will, doubtless, be frequent cases of re-conviction ; and those cases will necessarily multiply, as the number of convicts shall increase, and the number of those discharged shall be continually augmenting.

“ In every large establishment, there will always be a class of convicts, who may be appropriately styled, *state prison characters*. A prison is their element. They can, seemingly, breathe no other air. If you throw them back upon the world, they are not satisfied till they are again in prison. If their sentence be short, when it expires, they go out but to be re-convicted, and to be returned. So they live, and so they die ; and it is from this class that re-convictions, for the most part, take place, and are to be expected.

“ It ought not, then, from this circumstance, to be concluded, that

much the greater portion of those who are the subjects of the discipline of this prison are not benefitted, and made better men, and fitted to be better citizens. We think that facts abundantly attest, that such a conclusion would be far from the truth. Sufficient time, it is true, has not yet elapsed, fully to develop the influence of confinement in this prison in reforming the habits and dispositions of men; but enough has appeared to promise the most favourable results.

"In the fall of 1826, an effort was made, by circular letters directed to postmasters, sheriffs, district attorneys, and other public officers, to ascertain the character and conduct of convicts, who had been discharged from this prison, and, withal, the effect which their confinement had produced. The result was, that information was obtained in relation to seventy-nine; and the accounts received were forwarded by the inspectors to the legislature.

"The same effort has again been made the past fall, and on a somewhat larger scale. The number in regard to which information has been lately obtained is 127.

"This number includes about forty of those who were heard from the last year. Reckoning those of the last year's list, who have not been heard from, this season, the whole number in relation to whom information has been received, is 160.

"The following Table will furnish a very condensed but correct view of the result. The names of the individuals are withheld. Their initials only are given. What is said of character, is, in most cases, in the *precise words* of those from whom the information was derived. Where there is any variation of expression, it has been made merely for the sake of brevity; the plain import of the language being, in no case, designedly varied. The order in which the several cases are given, is the same as that in which they were received and registered.

"Of the number contained in the following table, which amounts to 160, one hundred and twelve are described either as decidedly steady and industrious, and sustaining good characters, or very greatly improved; twelve, as somewhat reformed; two, as not much improved; four, with respect to whom nothing very particular was known, but nothing unfavourable; two, as rather suspicious characters; two, as deranged; and twenty-six, as decidedly bad, and not at all improved.

"In addition to the following, it is proper to state, that there are now in this prison, twenty-nine convicts who have, once before, been confined here. Several of this number are of that class who were sent to the canal, and escaped, and were afterwards convicted of new offences. A number of others had been old offenders, and had been confined in other prisons previously to being sentenced to this.

"After all, it is humbly conceived, that the facts disclosed in the annexed table and statements, are of a nature to encourage the hopes and warrant the increased exertions of our legislators, and of all who feel an interest in the moral improvement and reformation of this degraded and unhappy class of our fellow beings."

TABLE.

<i>Initials.</i>	<i>Crime.</i>	<i>Character before Conviction.</i>	<i>Character since discharged.</i>	<i>Date of Discharge.</i>
W. S.	Forgery.	Irregular and intemperate.	Regular, sober, and honest.	Jan. 9, 1826.
C. R.	Burglary.	Habits in general good.	Steady, moral, industrious, and temperate.	March 11, 1826.
N. C.	Counterfeit money.	Intemperate; suspicious.	More temperate.	July 12, 1827.
A. B.	Forgery.	Not good.	Conduct good.	Sept. 14, 1822.
A. M. B.	Pet. larceny, 2d offence.	Unsteady.	Conduct good.	Aug. 7, 1827.
E. W.	Conspiracy to cheat.	Not known.	Conducts with propriety.	Sept. 15, 1823.
P. D.	Forgery.	Not known.	Conduct good.	March 26, 1824.
W. P.	Grand larceny.	Dishonest and dishonourable.	Same as before conviction.	Feb. 23, 1822.
J. C.	do do	Character good.	Deranged.	Jan. 4, 1826.
L. R.	do do	Steady and industrious.	Steady and industrious.	Sept. 19, 1825.
E. P.	Counterfeit money.	An idle profligate.	Improved.	Oct. 2, 1824.
J. H.	Bigamy.	Habits bad.	Bad.	June 26, 1822. [never ret.
O. S.	Grand larceny.	Bad.	Improved.	Sent to canal, & escaped;
W. H.	Perjury.	Quarrelsome and bad.	Quiet, peaceable, and respectable.	Mar. 15, 1826.
J. O.	Felony.	Unsteady.	Very industrious; habits correct.	June 26, 1826.
O. S.	Grand larceny.	Indolent, intemperate, and vicious.	Temperate, industrious, and much improved.	April 10, 1826.
J. S.	Attempt to rape.	Very intemperate.	Somewhat improved.	Jan. 4, 1822.
J. M.	Manslaughter.	Very notoriously bad.	Greatly improved.	March 4, 1826.
H. C.	Grand larceny.	Not known.	Uniformly industrious and honest.	June 23, 1825.
J. C.	Assault to murder.	Very abandoned fellow; intemperate.	A reformed man, apparently.	June 18, 1827.
J. C. P.	Arson.	Pretty fair character.	Uniformly good.	July 7, 1826.
W. L.	Assisting to break jail.	Suspicious.	Not much improved.	March 6, 1826.
P. T.	Manslaughter.	Intemperate and quarrelsome.	Greatly improved; conducts with propriety.	July 20, 1827.
J. C.	Forgery.	Habitual drunkard.	Habits still bad.	Aug. 3, 1826.
D. R.	Counterfeit money.	Not known.	Industrious and orderly.	April 8, 1820.
S. N.	Forgery.	Not known.	Industrious and orderly.	Feb. 2, 1821.
J. G.	Aiding to break jail.	Not good.	Better citizen.	April 4, 1825.
A. B.	Pet. larceny, 2d offence.	Very intemperate and thievish.	Appears reformed.	Nov. 10, 1826.
H. A.	Arson.	Not known.	Sustains very good character.	July 24, 1822.
A. D.	Perjury.	Loose, drunken fellow.	Loose, drunken fellow.	Jan. 26, 1822.
J. F.	Assault to rape.	Not known.	Steady and industrious.	March 12, 1822.

<i>Initials.</i>	<i>Crime.</i>	<i>Character before Conviction.</i>	<i>Character since discharged.</i>	<i>Date of Discharge.</i>
J. G.	Perjury.	Not known.	Industrious good citizen.	March 16, 1831.
D. P. M. N.	Forgery.	Intemperate.	Conduct bad.	Dec. 24, 1825.
M. S.	Perjury.	A bad man and an infidel.	No wise improved : is more than 70.	Oct. 13, 1826.
J. I. H.	Forgery.	Loose and intemperate.	Steady and industrious.	Oct. 19, 1826.
H. D. L.	Arson.	Reputation bad.	Nothing unfavourable.	May 4, 1827.
J. B.	Atroc.	Very intemperate.	Steady and industrious.	Aug. 14, 1826.
J. P.	Ct. money.	Not good.	Character and habits good.	Sept. 24, 1810.
E. S.	Burglary.	Very notoriously bad.	Conduct irreproachable.	Feb. 8, 1826.
C. S.	Ct. money.	Worthless character.	In jail again for same offence.	Nov. 11, 1826.
E. C. D.	G. larceny.	Not known.	Honest, fair character.	April 7, 1824. [never ret.
L. W.	Forgery.	Bad.	Bad.	Sent to canal ; escaped, &
W. M. B.	G. larceny.	Had before been a convict in N. Y. [prison.	Bad.	Feb. 5, 1824.
G. M.	Manlaugther.	Habits bad and vicious.	Not improved.	July 20, 1818.
A. B.	G. larceny.	Not known.	Nothing improper.	June 30, 1824.
A. P.	do	Intemperate.	Very industrious, sober, and character good.	March 13, 1826. [1825.
E. R.	do	do	do	Sent to new prison, April.
D. T.	do	do	do	do
E. B. D.	G. larceny, 2d convic.	Character very bad.	Is again in jail for larceny.	Aug. 30, 1826.
J. S.	Manlaugther.	Intemperate and malignant.	Much improved.	Nov. 28, 1823.
C. F.	Assault to murder.	Very intemperate.	Sober, discreet man.	April 15, 1824.
B. H.	Ct. money.	Suspicious.	Industrious and honest.	Nov. 6, 1822.
J. M. C.	Forgery.	Not known.	Character and conduct good.	Aug. 30, 1819.
J. H.	Ct. money.	do	Very respectable, and much thought of.	Feb. 28, 1821.
Forgery.			Much more steady and industrious.	Jan. 18, 1820.
H. H.	Burglary.	Thievish.	Entirely reformed ; trusty and faithful.	March 24, 1826.
J. S.	G. larceny.	Habits not the best.	Industrious, honest, respectable, and pious.	July 7, 1821.
J. K.	Ct. money.	Long suspected.	Good moral character.	Jan. 11, 1826.
W. P.	Perjury.	Very intemperate.	Temperate and industrious.	July 26, 1827.
J. B.	G. larceny.	Unsteady.	Behaves well.	June 4, 1827.
B. C.	do	Character good.	do	June 16, 1827.
J. L.	Bigamy.	Habitual drunkard.	No wise altered.	July 26, 1826.
E. A.	Breaking jail.	Not known.	Character and habits good.	Aug. 10, 1826.
B. B.	Misdemeanor.	do	More industrious and sober, and not suspected.	Jan. 10, 1823.

<i>Initials.</i>	<i>Crime.</i>	<i>Character before Conviction.</i>	<i>Character since discharged.</i>	<i>Date of Discharge.</i>
P. D.	G. larceny.	Unsteady and dishonest.	Conduct honest and upright.	Oct. 18, 1826.
T. H.	Forgery.	Idle and dissipated.	Better citizen, and reformation appears real.	April 22, 1826.
F. Y.	Forgery.	Unsteady and bad.	Appears a thoroughly reformed man.	Sept. 20, 1826.
A. P.	G. larceny.	Indolent.	Industrious, and well esteemed.	Feb. 6, 1826.
J. V.	Forgery.	Not known.	Conduct very good.	June 18, 1827.
C. D.	G. larceny.	Rather loose.	Industrious, good inhabitant.	Nov. 25, 1826.
N. B.	Aiding escape of prison- [ers.]	Not very good.	Behaves with strict propriety.	April 15, 1826.
W. B.	Forgery.	Not known.	An honest, industrious man.	Nov. 16, 1826.
D. L.	G. larceny.	Excessively vicious and intemperate.	Perfectly regular and unexceptionable.	April 8, 1818.
L. S. B.	Perjury.	Unsteady and idle.	Sustains a fair character; steady and industrious	June 20, 1827.
J. K.	Ct. money.	Intemperate and dishonest.	Manifest reformation.	Jan. 19, 1827.
G. O. B.	Forgery.	Character good.	Character good: industrious and thrifty.	Sept. 4, 1821.
D. H.	Perjury.	Simple and ignorant.	Simple & ignorant, but his honesty not suspected	July 9, 1821.
H. S.	Ct. money.	Idle and dissipated.	Has been idle and dissipated since his dis- charge, for a time; but now appears to be reformed and pious.	Jan. 7, 1822.
A. A.			Intemperate: otherwise decent.	April 16, 1822.
J. T.	G. larceny.	Character bad.	Continues intemperate.	April 25, 1820.
A. M. D.	G. larceny.	Very intemperate.	An altered man; no bad habits.	Sept. 1, 1819.
H. R.	Forgery.	Habits not good.	Character good; steady and industrious.	June 19, 1824.
J. R.	Ct. money.	Not known.	Continues bad.	Dec. 4, 1822.
T. M.	Perjury.	Character bad.	Decent, sober man, and a professor of religion.	Oct. 19, 1819. [never ret.
A. B.	Perjury.	Not known.	More orderly; his neighbours speak well of him.	Sent to canal Feb. 1822, &
J. H.	G. larceny.	Not the best.	Have heard nothing against him.	June 16, 1820.
A. H.	G. larceny.	Not known.	Deranged in prison, and since. [some citizen.	June 28, 1825.
R. R.	G. larceny.	Very intemperate.	Morals improved, and is a good and whole-	June 4, 1826.
B. N.	G. larceny.	Not described.	Not good now, but rather improved.	Jan. 13, 1827.
S. S.	Forgery.	Character bad.	Exemplary in all respects.	May 18, 1826.
D. S.	Ct. money.	Not known.	Behaves much better.	Sent to new prison, A p 1825
Ididan.	G. larceny.	Not described.	A wholesome citizen of the second class.	Sent to canal, and escaped,
F. G.	Ct. money.	Extremely vicious.	A good citizen of the first class.	Jan. 26, 1822. [never ret.
E. W.	Forgery.	Dishonest and quarrelsome.		Dec. 4, 1820.
P. H.	G. larceny.	Character bad.	Behaves very well.	June 20, 1827.

<i>Initials.</i>	<i>Crime.</i>	<i>Character before Conviction.</i>	<i>Character since discharged.</i>	<i>Date of Discharge.</i>
J. D.	Forgery.	Simple and ignorant.	Behaves very well.	Feb. 7, 1818.
P. F.	Perjury.	Character very bad.	Is bad still.	April 24, 1834.
R. C.	G. larceny.	Intemperate.	Steady and industrious.	June 26, 1827.
L. L.	Arson.	Not specified.	Steady, and doing well.	Oct. 6, 1826.
J. P. C.	Ct. money.	Character very bad.	Industrious, and has the confidence of commu- [city.	June 30, 1836.
S. M.	Ct. money.	Good.	Character fair, and is much respected.	March 6, 1824.
J. W.	Breaking jail.	Not described.	Steady, industrious, and a professor of religion.	Aug. 31, 1830.
S. S. H.	Ct. money.	Not described.	Conduct very good; a merchant.	Oct. 9, 1830.
D. R. B.	Ct. money.	Very intemperate.	Much reformed.	July 7, 1826.
G. D.	Assault to rape.	Habits bad.	Much as before.	April 12, 1837.
J. W.	Ct. money.	Not described.	Somewhat reformed.	Nov. 26, 1824.
R. D.	Forgery.	Respectable.	Suspicious.	Jan. 10, 1826.
W. D.	Forgery.	Habits very bad.	Habits good; appears a reformed man.	June 30, 1837.
D. S.	Forgery.	Intemperate.	Intemperate and thievish.	Sept. 24, 1812.
J. T.	Burglary.	Habits bad.	Somewhat improved, but none too good now.	May 26, 1824.
A. V. T.	G. larceny.	Not very good.	Conduct good, and appears like an honest man.	June 1, 1826.
J. K.	G. larceny.	Not known.	Industrious and thriving.	Jan. 22, 1820.
J. B.	Perjury.	A bad man.	Steady, and doing well; habits much improved.	July 6, 1826.
L. W. M.	Forgery.	A dishonest and dangerous man.	Is dishonest yet.	Feb. 16, 1824.
D. C.	Perjury.	Not described.	An industrious, good citizen.	Sent to canal in 1823; es- caped, and not returned.
J. P.	Attempt to rape.	Very intemperate.	More temperate, and behaves much better.	April 11, 1826.
J. P.	Perjury.	Not described.	Much improved.	June 2, 1820.
A. P.	Ct. money.	Not very vicious.	Character good; honest and upright.	April 15, 1824.
J. P.	G. larceny.	Very vicious.	Much reformed.	June 17, 1827.
J. M. B.	G. larceny.	Not described.	Conduct good, and much reformed.	Dec. 18, 1826.
A. H.	G. larceny.	A worthless fellow.	Worthless still.	Oct. 25, 1828.
W. M.	G. larceny.	Not described.	Conducts well.	[1825.
S. S.	Burglary.	Generally good.	A respectable, trustworthy man.	Sent to new prison, April,
A. C.	Ct. money.	Dishonest and vicious.	A pretty fair character; industrious.	Aug. 27, 1823.
A. P.	Assisting to break jail.	Intemperate.	Habits much improved.	April 18, 1826.
J. C. C.	Ct. money.	Not known.	Sober, honest, and industrious.	June 24, 1826.
D. J.	G. larceny.	Unsteady and vicious.	Not altered for the better.	Oct. 9, 1826.
				Dec. 16, 1820.

<i>Individuals.</i>	<i>Crime.</i>	<i>Character before Conviction.</i>	<i>Character since discharged.</i>	<i>Date of Discharge.</i>
H. L.	Forgery.	Good.	Good.	April 13, 1825.
A. P.	Ct. money.	Rude and unsteady.	Honest, and character good.	April 15, 1824.
J. P.	G. larceny.	Not described.	Greatly improved; temperate and industrious.	May 16, 1822.
A. W.	Ct. money.	Very bad.	Considerably improved.	Feb. 5, 1824.
J. T. L.	Forgery.	Decent.	Remarkably industrious, sober, and steady.	Aug. 15, 1826.
J. B.	Ct. money.	Not known.	In Philadelphia prison.	Sept. 23, 1823.
C. W. S.	Forgery.	Very good.	Very good.	Dec. 10, 1825.
M. L.	Perjury.	Not known.	Decent, industrious man; only stimulates too	Sept. 9, 1824.
N. D.	Ct. money.	Not very good.	Very steady and industrious.	Feb. 25, 1824.
L. J.	Perjury.	Not very bad.	Altered for the better, but not very good.	March 16, 1825.
W. L.	Ct. money.	Bad.	Still bad.	June 2, 1826.
S. Y. S.	Ct. money.	Idle.	Greatly improved.	Dec. 23, 1820.
J. D. S.	G. larceny.	Not given.	No reformation.	Feb. 14, 1826.
D. Y.	G. larceny, 2d convic.	Very bad.	Regular and inoffensive; thought by some to be partially deranged.	Feb. 5, 1824.
J. G. F.	Perjury.	Extremely bad.	Peaceable and industrious, but somewhat in-	Jan. 11, 1825.
J. S.	G. larceny.	Inconsiderate and irregular.	Industrious, and attentive to business.	Dec. 2, 1824.
J. F.	Forgery.	A prudent man.	Sustains good character.	Aug. 31, 1825.
S. C.	Perjury.	Rude.	Much reformed.	Sept. 1, 1825.
J. R.	G. larceny.	Not described.	Much improved.	Jan. 7, 1823.
D. B.	Ct. money.	Not described.	Much improved.	May 25, 1825.
E. B.	Ct. money.	Not described.	Much improved.	May 25, 1825.
H. P.	Ct. money.	Not known.	Neighbours say he is not a very bad man.	Aug. 17, 1823.
J. M.	Perjury.	Intemperate and unsteady.	Conduct very correct.	Sept. 4, 1823.
J. P.	Forgery.	Not known.	Dissipated and worthless.	June 17, 1825.
P. S.	Perjury and larceny.	Very bad.	Habits and character good.	April 24, 1824.
E. B.	G. larceny.	Said to be an old offender.	Habits bad.	Aug. 24, 1823.
P. W. W.	G. larceny.	Not known.	Thievish.	April 12, 1826.
J. W. B.	Ct. money.	Not known.	Conduct, till of late, very good.	Feb. 25, 1826.
J. W.	G. larceny.	Very vicious.	In New-York prison.	Dec. 17, 1821.
P. B.	G. larceny.	Not known.	Steady, industrious, and well esteemed.	March 28, 1820.
A. G.	Ct. money.	Intemperate and bad.	Steady, industrious, and a professor of religion.	April 12, 1826.
W. R.	G. larceny.	Not known.	Character and habits good.	Nov. 6, 1825.
O. G.	Ct. money.	Not stated.	A moral, good man.	Aug. 22, 1821.

INTELLIGENCE.

The Minister of Justice in France has just published a statement, containing details relative to the administration of justice in the civil tribunals, during the ten years between the 1st of September, 1820, and the 31st of August, 1831.

This is the first publication of the kind, but it will henceforth be annually continued. The statement is divided into three parts. The first consists of a report to the king, showing the principal advantages to be derived from this kind of statistical information; the other two parts are composed of a number of tables, presenting in two points of view, and in two different orders, the summary of the labours of the *Cour de Cassation*, the *Cours Royales*, and the tribunals of *première instance*, during the last ten years. The first series comprises, besides the proceedings of the *Cour de Cassation*, those of the *Cours Royales*, and of the tribunals of *première instance*, classed according to the divisions of the country over which the *Cours Royales* have jurisdiction. The effect of the first part is to show, in some degree, the relative spirit of litigation, or, in other words, the number of suits in proportion to the population of each division, and at the same time to show the degree of activity displayed by each of the *Cours Royales*, and communicated, in a certain degree, to the tribunals of each division within its jurisdiction. The second series presents exactly the same details, but classes the tribunals by the number of chambers (and consequently of judges) of which they consist. This second part is calculated to show on the one hand, whether the number of judges is in proportion to the number of causes brought before them; and on the other, whether the number of causes adjudicated upon is proportioned to the number of judges. Such are the general results of these statistical tables for the whole of France, and such the information they afford on many problems, which the legislature may speedily be called upon to solve.

The number of causes in arrear on the 31st of August, 1820, before the tribunals of *première instance* was 57,891; and before the *Cours Royales* 6,938. On the 31st of August, 1831, there were only in arrear before the tribunals of *première instance* 42,917 causes; but, on the contrary, before the *Cours Royales* the arrear had increased to 9,428.

The number of civil causes entered from the 1st of September, 1821, to the 31st of August, 1830, in all the tribunals of *première instance* throughout the kingdom is 1,152,665, exclusive of those commercial causes which are brought before the tribunals of *première instance* in those places where there is no tribunal of commerce.

The number of civil and commercial causes brought before the *Cours Royales* and courts of appeal, during the same period of time, is 180,083.

The number of judgments given by the *Chamber de Requetes* of the *Cour de Cassation* (which chamber decides on the admissibility of the appeal) is 5,260, of which 3,250 were rejected and 2,110 admitted; 1,660 appeals have been decided by the *Chambre Civile* of the same court, and of these the judgments in 758 have been affirmed, and in 906 the judgments quashed, and remitted to the courts below. There was in arrear on the 31st of August, 1830, in the *Chambre de Requetes*, 659 appeals, and in the *Chambre Civile*, 91.

It has been remarked that the number of causes in each jurisdiction of the *Cour Royale* is not in proportion either to the population, or to the superficial extent of the territory included within the jurisdiction, and it is thus shown, at least with regard to the last ten years, that the judges have not been well distributed through France, the law organizing the tribunals having taken the population as a basis upon which to determine the number of judges for each court or tribunal. Thus, certain courts and tribunals, having a less number of chambers, have been more burdened than others, divided into more chambers, and possessing therefore a greater number of judges. The number of causes in ten years has been in the proportion of one cause to fifteen inhabitants throughout the whole district of the *Cours Royales* of Nismes and Grenoble; of one to twenty in the districts of the courts of Bourges, Lyons, and Montpellier; one to twenty-one in the districts of the courts of Paris, Rouen, and Caen. There are, therefore, contrary to the common notion, parts of France more litigious than Normandy. The Bretons seem to be the least litigious persons; for in the district of the courts of Angers and of Rennes, there has only been in ten years one cause for every sixty-six and ninety-five inhabitants; but this may be caused by there being less activity in old Brittany, and fewer commercial transactions.

This publication of the ministry of justice is in many respects imperfect. It comprises no decisions upon interlocutory matters, nor any account of the number of those cases in which the courts issue execution upon instruments in some respects analogous to our warrants of attorney. It does not point out the nature of the causes, nor distinguish, in the decrees of the *Cours Royales*, those which have reversed from those which have affirmed the judgments of the tribunals of *première instance*.

These improvements are promised in the future statements.

We are afraid that some of these details will not be intelligible to such of our readers as are not familiar with the organization of the French courts; but we have refrained from entering into any explanations, as it is our intention in our next number to present a detailed account of the various courts of France.

We have endeavoured to procure from the United States some statistical details of the state of crime in that country, which, considering the great experiments made there in penal legislation, would of course be particularly valuable. We regret to state that our inquiries have been unproductive, and that the desired information is not to be obtained. The general operations of none of the state tribunals are ever collected, and no authentic account of them can, therefore, be published. What is known by the public with regard to the proceedings of the judicial establishments, is gathered from individual observation, or from the scattered statements found in newspapers, or in the periodical publications of the day.

It would be eminently desirable to trace the effect of the ameliorations which have taken place in the penal laws of the different states, and to contrast it with the state of crime under the former system; but for such an attempt the materials are unfortunately wanting. It is, however, very gratifying to learn, that, in the opinion of intelligent observers, the effect of the changes has been most beneficial. "A general sentiment," says one of our American correspondents, "has prevailed in favour of mitigated penalties for crime, which, as far as my observation extends, has been attended with the happiest consequences. Fewer crimes are punished with the death of the criminal. Imprisonment is lessened in duration, and solitary confinement in this state (Massachusetts) especially, is materially diminished. All this has given a character less of ferocity and vengeance, than of paternal kindness to the administration of the criminal law, and has not had the effect, which was at one time attributed to it, of encouraging the commission of crime. But the most efficient preventives of crime are found in extensive systems of early education; in restraints on the young by houses of industry and correction, where they may be confined and employed; and by a conservative police, that is rather under the direction of charity than of law, and that visits the families of those who might otherwise contribute to fill the gaols and penitentiaries of the state."

We regret to announce the discontinuance in France of two well-known periodical works on the subject of jurisprudence, the *Themis*, and the *Revue Judiciaire*. The Italians, however, are about to establish at Pisa a Quarterly Journal of Legislation and Jurisprudence. Of this work we hope to give an account soon after its appearance. A notice of "the American Jurist," will, we expect, be included in our next number.

* * * No Index having been appended to the two former volumes of the Jurist, a general Index to those and to the third volume, will be given in our number for November.

THE JURIST.

JULY, 1832.

ART. I.—ADMINISTRATION OF JUSTICE IN INDIA.

The East India Company's charter, or, more correctly, their twenty years' lease of the government of 70,000,000 of people, and their monopoly of the trade of the Indies, the relics of a barbarous legislation, will expire in April, 1834, not (as we honestly hope) to be renewed in an enlightened age, and by the reformed parliament of an enlightened nation. Various committees of both houses of parliament have, since the beginning of 1830, been engaged in investigating the great questions to which we have alluded, under the somewhat ludicrous misnomer of "the Affairs of the East India Company." The final report will, in all probability, be made before the termination of the present session of parliament, and the entire subject will occupy a large share of the attention of the legislature in the course of the next session, when some final measure must be adopted. So important an occasion offers an ample justification for our again * taking up the subject of Indian jurisprudence, which we shall continue to keep in view. We begin, then, with a rapid sketch of the system as it at present exists.

The English territories in India, excluding recent acquisitions, into which nothing like a systematic administration of justice has as yet been introduced, contain an area of about 430,000 square miles, and a population of about 70,000,000. In other words, they are about four times the size of Great Britain and Ireland, and contain three times their number of inhabitants. The Indian subjects of Great Britain consist, besides many smaller tribes, of *eight* great nations, speaking as many distinct languages, and

* See *The Jurist*, vol. ii. p. 225, for a review of Mr. Miller's book on the Administration of Law in India.

varying most materially in manners and customs.* The people speaking the Bengal language, all of whom are British subjects, amount, for example, to not less than 25,000,000. The people speaking the Tamul language amount to nearly 7,000,000, most of whom are British subjects. Speaking the Hindi language we have, probably, not less than 20,000,000 of subjects. These are all in Hindustan; but we have beyond its bounds portions of territory in which the Malay, the Chinese, the Birman, the Pegu, and the Arracanere languages are spoken. Such is the country, and such are the people for which we are to make laws and to administer justice.

The laws administered in our Indian courts are a mixture of Hindoo laws and customs, Mahomedan laws and customs, the customs of some other tribes and nations, English common and statute law (the latter only up to the establishment of each particular king's court by parliament or charter, unless India be expressly named), and laws passed by the different local governments, under general powers granted, or rather supposed to be granted, for it is difficult to point them out, by parliamentary enactments. These last, technically called *Regulations*, "consist," as the best authority on such a question, the Court of Directors, state, "almost entirely of rules of procedure," the judge having "no law to guide his decisions but that of his own conscience."† The *Regulations* are numbered and registered into a kind of code for each Presidency, the code of Bengal having commenced in 1793, that of Bombay in 1799, and that of Madras in 1802. The aggregate, up to the present day, forms a good camel load! Besides these regulations, there is another class of laws made by the local governments for the special jurisdictions of the King's courts. These are called *Rules*, *Ordinances*, and *Regulations*. These do not become laws unless the judges of the King's court agree to register them under certain formalities, and in the words of the statute, unless their provisions are such as are "not repugnant to the laws of the realm." An English judge, however, may now and then be found, who would perhaps not think some of the edicts issuing from the Sublime Porte repugnant to the laws of the realm. In 1823, a single judge, happening by accident to be alone on the bench, agreed to register a rule, ordinance, and regulation for putting down the liberty of the press, he and the Company's advocate declaring that it was no part or parcel of the law of the land. Three of the King's judges sitting on the bench at

* These are the Bengal, the Hindi, the Ooria, the Mahratta, the Teluiga, the Tamul, the Carnata, and the Malayalam, or Proper Malabar.

† Letter from the Court of Directors to the Government of Bengal, dated the 8th December, 1824.—Judicial Selections, vol. iv. p. 38.

Bombay at the same time refused to register the same regulation, because, according to them, it was "repugnant to the laws of the realm."—In the King's courts, and generally in the Company's, the rule prescribed in the original charter of justice for Calcutta, and afterwards embodied in the 21st Geo. III. cap. 70, sect. 18 and 19, as well as in subsequent enactments for new courts, is observed in administering justice to the natives. The provisions of it are as follow:—"Provided that their (the natives') inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Mahomedan or Gento, by the laws and usages of the defendant. And, in order that regard should be had to the civil and religious usages of the said natives, be it enacted, that the rights and authorities of fathers of families, and masters of families, according as the same might have been exercised by the Gento or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England." This latitudinarian legislation provides, however, only for two classes of suitors besides British-born subjects;—for the offspring of the latter with natives, native Christians, and all Asiatic strangers, not being Hindoos or Mahomedans, are wholly unprovided for by any express enactments. With respect to the Hindoo law, which, in its integrity, has not been the law in force in most parts of the British dominions for many centuries, the greater part of the code is extremely rude and barbarous, and not only unsuited to the present state of society among the Hindoos themselves, but to almost any condition of society, however rude, to which the imagination can well reach. A most competent and excellent observer, Sir Henry Straeley, some years since a judge of the Indian provincial courts, draws the following exact and graphic account of it, in reply to queries circulated by the Court of Directors, and in which, strange to tell, they expressed a disposition for its re-establishment to a certain extent: "The Hindoo laws, known to us," says he, "are contained in two books which are deposited in the Dewanny Adawlut, or civil court of every district in Bengal,—the digest, compiled by some Brahmins, and translated by Mr. Colebrooke,—and the Hindoo institutes or ordinances of Menu, translated by Sir William Jones. There they lie, as ornaments, upon the table, but of little or no use. I have examined these books as matters of curiosity, but was not in the habit of consulting them, with a view to throw light upon any

doubtful point, or to gather from them rules of practice. In truth, to my poor judgment, they seem little more than a mass of priest-craft and folly.*

The Mahomedan Turks, or Turkomans, began to invade India about half a century before the Normans invaded our own country, and two centuries after their first invasion they established a permanent dominion in it, including the principal possessions now belonging to the British government; so that Mahomedan dominion had in reality existed in India about five centuries and a half before the commencement of our own rule. Leaving, generally, their own laws to the Hindoos, or rather their customs in matters of inheritance, contract, and caste, because they had not the power to abolish them, they introduced the Mahomedan criminal law wherever their dominion extended, and this law, with modifications, has been universally adopted by us, except within the special jurisdictions of the King's courts. A Mahomedan law assessor, or mufti, sits in each criminal court, by whose exposition of the law the English judge is bound to decide and pass judgment.

The author of a valuable work on the revenue and judicial system of India, which we shall briefly notice in another part of the present number of "the Jurist,"† is of opinion that "the criminal law in India has been very judiciously founded on the Mahomedan criminal law," admitting that "it has, however, been so greatly modified by the acts of government from time to time since 1793, that it, in fact, constitutes a new system of law, consisting partly of its original basis, and partly of the government regulations." We dissent, however, entirely in this point from the writer. The law which ought to be administered by a humane and civilised people, ruling two semi-barbarous people, ought in our opinion to be their own, rendered simple and suitable, at least not that of the smaller party, scarcely constituting one-tenth part of the population. What can the English conquerors have to do with a code of laws promulgated twelve centuries back for a people in a very different state of society from that of the people of Hindustan—unaltered up to the present moment—unalterable if we adopt its true genius, and written and expounded in the Arabic language, a dialect not known to one man out of one hundred thousand of the entire population?

But, in fact, our author himself has afforded the best refutation of his own assertion in the following answer to one of the questions put by the board. "The *regulations* published from year to year

* Judicial Selections, vol. ii. p. 53.

† Exposition of the Practical Operation of the Judicial and Revenue Systems of India, &c., by Rajah Rammohun Roy. Lond. 1832.

by the local government since 1793, which serve as instructions to the courts, are so voluminous, complicated, and in many instances, either too concise or too exuberant, that they are generally considered not a clear and easy guide; and the Hindoo and Mahomedan laws, administered in conjunction with the above regulations, being spread over a great number of different books of various, and sometimes doubtful authority, the judges, as to law points, depend entirely on the interpretations of their native lawyers, whose conflicting legal opinions have introduced great perplexity into the administration of justice." p. 4.

The different courts prevailing in the British dominions may be divided into King's and Company's, and the latter into European and native courts. We shall first refer to the King's courts. The special jurisdiction of these is confined to the towns of Calcutta, Madras, Bombay, and the settlements of Prince of Wales' island, Singapore, and Malacca. The area and population contained within each special jurisdiction for the four courts is as follows:

	Square Miles.	Population.
Calcutta	7	265,000
Madras	30	462,051
Bombay	18½	162,570
Prince of Wales' Island, &c.	1317	107,054
Total	1372½	996,675

About a million, or nearly one-seventieth part of the whole population of British India, is therefore specially subjected to English laws; but besides these, British-born subjects, wherever situated, are subject to them, as well as natives registered as in the service of the Company within the provinces, all natives having either temporary domicile, or a place or office for the transaction of business within the special limits, and all natives specially contracting to abide by the jurisdiction. The King's courts of Calcutta, Madras, and Bombay, called "Supreme courts," consisting of a chief-justice and two puisne judges each, have the same civil, criminal, admiralty, and ecclesiastical jurisdictions as the superior courts at home; and the rules and forms of procedure, which the original charter and act of parliament gave the courts authority to frame, are the same. In civil suits there are no juries, though there invariably are in criminal cases, on which, since 1827, Hindoos, Mahomedans, and native Christians have sat, but as petty jurors only. The King's court of Prince of Wales' Island, Singapore, and Malacca, called "the Recorder's court," is differently constituted; it has the same civil, criminal, and ecclesiastical, as the Supreme courts, but no admiralty jurisdiction. In the forms of procedure there are no written pleadings, and the governor and

members of council, mischievously and preposterously, are joint judges with the King's recorder. There is also no regular bar, the friends of suitors being allowed to plead for them.

In reference to the administration of justice to the natives specially, and more or less also to the Europeans, the principal objections urged against the Supreme courts (the Recorder's court is not amenable to them) consist in the complexity, tediousness, and costliness of the process. Of the first two qualities we need not speak here, our readers being already familiar with them from the practice of the English courts. The expences may be judged of from the official statements laid before parliament of the emoluments of the principal officers. We give these, as well as the judges' salaries, for the court of Calcutta in 1827.

Chief-justice	£ 7,814
One Puisne Judge	5,860
One ditto	5,860*
Registrar	22,800
Master in Equity and Accountant-general	9,464
Clerk of the Crown and Prothonotary	8,248
Sworn Clerk	5,297
Clerk of the Papers and Reading Clerk	3,410
Examiner and Sealer	2,827
Sheriff	4,619

The officers' emoluments (the judges have none whatever) include salaries as well as fees; and from these are to be deducted expences and establishments: thus the actual profits of the registrar, as stated by himself, instead of 22,800*l.*, amounted only to 20,550*l.*, which, however, as it approaches to three times the salary of the chief-justice, and four times that of a puisne judge, is obviously an excessive rate of remuneration. The chief-justice receives for his passage to India 1,500*l.*, and the puisne judges 1,000*l.* each. The chief-justice, after five years' service, as such, is entitled to a pension of 1,000*l.* per annum, after seven years, of 1,200*l.*, and after ten years, of 2,000*l.* per annum. The puisne judges, after five years' service, are entitled to a pension of 750*l.*, after seven, of 1,000*l.*, and after ten of 1,500*l.* The salaries and pensions of the judges at Madras and Bombay are the same, and about one-fourth less than those of the Calcutta judges. Matters are differently arranged with respect to the recorder of Prince of Wales' Island. The original salary, without pension, was nominally 3,000*l.*: After the two settlements of Singapore and Malacca had been added to

* The nominal salary of the chief-justice is 8,000*l.*, and of the puisne judges 6,000*l.* but their worships are a little cheated in the exchange.

it, the salary was made nominally 4,500*l.* per annum, but at the ordinary rate of exchange it does not exceed 3,600*l.* The retiring pension, after five years' service, is 500*l.* per annum, after seven years 650*l.*, and after ten years 1,000*l.*

The Calcutta bar is able and respectable. The bench possesses the power of calling persons to the bar, but has seldom exercised it, and the barristers, therefore, for the most part, belong either to the English or Irish bar. The judges generally refuse permission to practise to any person who is not furnished with a licence from the East India Company. They have also thought proper to limit the number of barristers to twelve, and of this number not above four or five are generally in practice, many of the rest holding lucrative offices in court. Thus, in the list of officers we have given, the registrar, the master in equity, the sworn clerk, and the clerk of the papers, are all barristers. The Company's advocate-general is, by etiquette, allowed precedence at the bar. When a man of talents and industry, his emoluments exceed those of any practitioner at the English bar. With a fixed salary of 3,600*l.* per annum, and his fees, his annual emoluments have not unfrequently amounted to 20,000*l.* per annum; but for a person of his condition Calcutta is a more expensive place to live in than London. The litigation arising from the peculiarities of the Hindoo law of inheritance, and the general litigious character of the natives, are the ample sources of legal emolument. The solicitors at the Calcutta court are very numerous; we believe they exceed seventy. A few are very respectable, and in extensive practice. Many are not so respectable, and in no practice at all. A few are officers of the court, as the prothonotary, whose income considerably exceeds that of the chief-justice.

With all the technicality, costliness, and tediousness of the King's courts, they are unquestionably held in high respect by the natives, who place the firmest confidence in the skill of the bar, and in the impartiality and integrity of the bench. In proof of the security enjoyed under them, it is only necessary to state a simple and well-known fact, that money is lent by natives to each other, within their jurisdiction, at ten and twelve per cent., whilst it is always twice or three times, and occasionally four times, as high in the provinces.

We turn now to the Company's courts. The present system for the administration of justice in the provinces was first introduced by the Marquis Cornwallis, in the year 1793. We shall confine our remarks to those provinces of Bengal into which the system was first introduced, and where it has now existed, with very little change, for near forty years, remarking that a similar arrangement exists in all other parts of the British dominions, with the exception of the provinces acquired since the year 1817. The

country is divided into districts, called zillahs, an Arabic term for a division of the country which has reference to personal jurisdiction. In each district there is a British officer, called "judge and magistrate." A certain number of these zillahs constitute a circuit, appellate, or provincial jurisdiction. There are six classes of courts in all, viz. two native, and four European. These are, beginning with the lowest, the courts of the Munsif, an inferior native commissioner; the court of the Sudder Ameen, or chief native commissioner; the court of the Register; the court of the Zillah Judge; the Provincial court; and the Supreme court for the whole presidency sitting at Calcutta. The four first courts are civil courts only, and the lowest native courts can only try suits for matters of personal property. These consist each of a single judge, and the district judge has the assistance of a Hindoo and a Mahomedan law adviser. The civil jurisdiction of each court is generally determined by the amount or value of the property which can be sued for in them. In the lowest native court the amount is about 5*l.* sterling; in the highest native court 50*l.*, and in the Register's court 100*l.* Suits, however, cannot be instituted in the two last courts, and can only be referred to them at the discretion of the district judge. They are held at the same place or station with the district court, whereas the courts of the inferior commissioners are spread over the district. An appeal generally lies from the three inferior courts to the court of the district judge, from that of the district judge to the provincial court, and from the provincial court to the chief native court of the presidency, commonly called in its civil jurisdiction the Sudder Dewany, Arabic words which mean head civil court. From this again, where the matter in dispute exceeds the value of about 5,000*l.*, there lies a final appeal to the King in council. A case may, in fact, be carried by way of appeal, at least four times over from court to court. In the two native courts there are no written proceedings, the process being summary, like that of our courts of requests. In all the European courts the whole proceedings are taken in writing, and most preposterously, in the Persian language, in imitation of our Mahomedan predecessors. This language is always imperfectly, if at all, understood by the judges, and never understood at all by the suitors; the only parties who do understand it being a few ill paid native officers of the court, of whom, however, it is never the vernacular language, any more than law Latin was the vernacular language of England when the records of our courts were kept in that jargon.

The rules and process of the Company's superior courts, where law was to be administered by unprofessional judges without the assistance of a bar, and to a people ignorant of the English law and language, were framed by Sir Elijah Impey, the first King's

chief-justice in India, and who himself was constituted (and hence his recalc and impeachment) chief judge of the native court. Sir Elijah was a clever, but pedantic common place English lawyer, and framed the process on the complex and technical model of that of the English courts.

The provincial courts of appeal consist of a chief judge, and two or three puisne judges, and the Supreme court at the presidency of the same number. These two courts have both a primary and appellate as well as criminal jurisdiction; and one of the judges of the provincial courts proceeds periodically on circuit to each district within the division to make gaol deliveries. No capital sentence can be carried into execution without the confirmation of the principal court at Calcutta, which in its criminal jurisdiction has the title of *Sudder Nizamüt Adawlut*, Arabic words which mean chief criminal court of justice. In the Company's courts there is no semblance of jury trial, either in civil or criminal cases; but there is a bar, under the name of *vakeels* or *pleaders*—frequently an ignorant, and not unfrequently a very corrupt class—such, in general, as would be designated in this country by the word “*pettifogger*.” At this bar, no Englishman, or any other Christian, is allowed to practise. It is to be observed that the *zillah*, or district judges, are the sole magistrates and justices of the peace within their respective jurisdictions, and that they have the entire superintendence of the police.

Such was the system as originally framed, but of late years considerable changes have been made in it, every one for the worse, both as to principle and practice. In many situations the collectors of the land-tax have been vested with the powers of magistrates and justices of the peace, and even with civil jurisdiction in certain matters connected with the collection of the taxes, and thus have, in fact, been constituted judge and jury in their own cause. This alteration has been adopted throughout the whole Madras presidency, and no less than six of the district courts, or about a third of the whole, have been swept away. The last, and the most ridiculous change, is that made within the last three years in Bengal, where the commissioners of the land-tax have been constituted by an edict judges of circuit, and authorised to hang, scourge, or imprison for life the culprits of fifty millions of people. The *Rajah Rammohun Roy*, in the work already cited, is justly indignant at this most pernicious and absurd innovation, and says, that by this system—and he gives personal examples—“a gentleman may now be appointed to discharge the highest judicial duties, who never before tried the most trivial cause; and another to superintend the collectors of revenue, to whose duties he has been all his life a stranger.” p. 29. By the original constitution of the district courts the judge had no criminal jurisdiction; but since

1807, he is empowered to fine and inflict corporal punishment, and is, in fact, invested with the same authority generally that is conferred occasionally on magistrates in this country by particular statutes.

The system of administering justice now sketched may be tried—by the competency and capacity of the judges, their numbers in reference to the extent of duties to be performed,—the character of the native bar,—that of the code of laws to be administered, and the expences attending its administration. The English judges have no legal education, have to administer justice to a nation of strangers, in a strange language, without interpreters, to keep their records and proceedings in a language foreign to themselves and to the suitors, and they are called to execute the judicial office, the juniors as early as twenty, and the seniors as early as thirty. They have no assistance from an English bar, or from an intelligent bar of any kind. Generally pure themselves, their honest purposes are constantly baffled by the extreme chicanery and gross corruption of the native officers of their courts, and by the prevalence of perjury, forgery, and litigiousness among suitors and witnesses. The evidence, however, of the judges themselves, and of the Court of Directors, their masters, is better than any assertion of ours on this subject. One of the judges of the chief native court, afterwards a member of the Supreme Council, and now one of the Court of Directors, thus expresses himself: “The courts have no fixed principles of jurisprudence to direct their investigations and govern their decisions; and the judges are not only destitute of legal knowledge, but, from circumstances beyond control, cannot be selected for discretion and knowledge of business.” The Directors are still more explicit. “In the conduct of trials,” say they, “in unravelling intricacies of particular cases, in eliciting truth from witnesses, in appreciating evidence, in applying the law to the fact, Indian judges, unprepared by education or otherwise for the judicial office, have many peculiar difficulties to contend with. The code of regulations by which they are bound consists almost entirely of rules of procedure; the Mahomedan and Hindoo laws are the guide for their decisions in certain cases only, and in all others, not specially provided for, the judge has no law but that of his own conscience. For propriety in the proceedings of the courts, therefore, little security is to be found in the state of the law and of the judicial establishment.”* There is no appeal against such testimony as this. The evidence against the present system is indeed pretty universal. The Board of Control puts to

* Minute on the Administration of Justice, by James Stewart, Esq., Member of the Supreme Council.—Letter from the Court of Directors to the Government of Bengal.

the acute and philosophical Brahmin Rammohun Roy the following question: "Explain particularly in what points you consider the practical operation of the system defective?" And it receives the following succinct but comprehensive reply, a sort of slap in the face for obstinate folly of forty years' standing. "In the want of a sufficient number of judges and magistrates; in the want of adequate qualification in many of them to discharge the duty in foreign languages; and in the want of a proper code of laws, by which they might be easily guided." p. 2.

Sir John Leach, the present Master of the Rolls, has added his very competent testimony; for in a case which came on appeal from Bombay, he pronounced that it afforded a new proof that the judges of the Company's courts were neither acquainted with law nor justice, and that it was high time for the ministers of the crown to interfere.

But the official statement of the area and population of the part of the country to which we have chiefly confined our observations, or the three provinces of Bengal, Behar, and Orissa, will convey to the reader by far the best notion of the enormous mass of judicial and magisterial business to be performed, and of the total inadequacy of the means which exist for performing it. The following is an abstract of it.

Name of division.	Area of division in square miles.	Population of division.	Number of circuit or appellate courts.	Average area of district.	Average population of district.	Number of district courts in each division.
Calcutta	41,550	10,960,855	1	4,611	1,217,872	9
Patna	46,474	7,919,925	1	7,745	1,319,987	6
Moorshedabad	38,196	11,958,635	1	5,756	1,708,376	7
Decca	27,575	6,398,850	1	3,939	914,121	7
Total ..	153,802	37,238,265		22,051	5,160,356	29
Average ..	38,450	9,309,566		5,512	1,290,089	

It appears from this statement, that for a territory of above 150,000 square miles in extent, and containing above 37,000,000 of inhabitants, there are but four courts, circuit and appellate, and but twenty-nine district courts. Each circuit or appellate court, therefore, has for its own share above 38,000 square miles of territory, and above 9,000,000 of people; and each district judge and magistrate 5,500 square miles, and near 1,300,000 inhabitants, or more than half the population of the kingdom of Scotland, for his jurisdiction. The jurisdiction of the supreme appellate court at the presidency extends over an area of 220,000 square miles,

and 50,000,000 of inhabitants. The most remote portion of its jurisdiction cannot be less than 1,200 miles distant, over bad roads, with wretched means of communication. The circuit judge moves, or rather crawls, over his area of 38,000 miles at the rate of ten miles per diem, with camp equipage, a military escort, and a hundred followers. After such a statement, all reasoning respecting the infirmity of the system would be a work of utter supererogation. In the first year of the present century, the number of civil suits instituted under the Bengal presidency, then containing probably a population of about 35,000,000, was 362,342. In 1820, after a great augmentation of territory, which raised the population to about 50,000,000, those instituted fell to 175,270, or less than one-half.* This was produced by throwing obstacles in the way of what was called litigation, but in reality of the administration of justice. The number of courts was reduced, but above all, institution fees and stamp duties were imposed to deter suitors from coming forward. The impartial testimony of the Directors upon this subject is given in the following words: "The general falling-off in the institution of suits, in the years immediately succeeding 1814, is no doubt to be chiefly ascribed to those provisions of the regulations, which added to the expence of suits in the first instance, which limited the jurisdiction of the moonsiffs (lowest native commissioners), and which imposed restrictions on the admission of the suits of paupers."† The number of suits decided by the different courts under the presidency of Bengal in 1801 amounted to 376,417, and in 1820, with the augmentation of inhabitants already referred to, they amounted only to 162,575. It appears from the records that the native courts decide about seven-eighths of all the suits that are instituted.

In 1820, the delay in the administration of civil justice in the different courts under the presidency of Bengal was estimated as follows:

	Years.	Months.
Chief Civil Court	2	6
Provincial Courts	1	8
District Courts	2	2
Register's Court	1	2
Chief Native Commissioner's Court .	0	8½
Inferior ditto ditto	0	6

At this rate, a cause carried by appeal from the register to the judge, and through all its practicable stages, could not be decided in less than seven and a half years. An appeal from the district judge

* Besides the regular suits instituted, there is a class decided more summarily, and not entered on the regular files. These in 1820, amounted to 47,347.

† Judicial Letter to Bengal, 8th Dec., 1824.—Selections from Records at India House vol iv. p. 33.

to the provincial court, and from the provincial court to the chief civil court, could not be decided under six years and four months from the period of instituting a suit in each court; besides the time lost in preparing documents, and proceeding from court to court. In an appeal to the King in council, about twenty years more would perhaps be lost; so that the whole delay would amount to about "a generation!!"

The expences of the administration of justice for all British India amount to about a million and a half sterling per annum; but as at present a considerable portion of the charges are thrown on the administration of the revenue, probably the real expenditure does not fall short of two millions. This constitutes the most expensive system of administering justice in the world, even for the richest nations; and the extravagance is exaggerated when it is considered that the people concerned, although inhabiting a rich land, are themselves "very poor." One striking fact will be sufficient for the elucidation of this point. The total population of the Madras presidency amounts to about thirteen millions and a half,* and the amount of property decreed in all the courts, native and European, for this immense population, which exceeds that of the entire kingdom of Spain, does not average, for several years, above 270,000*l.* per annum, whereas the total judicial and police charges, exclusive of certain municipal ones, are no less than 350,000*l.* per annum. The bare salaries of the European judges amount yearly to about 260,000*l.* per annum, being within 10,000*l.* of the amount of property which they decide.† Let us fancy in England such a thing as the judges of the courts of justice being paid salaries equalling within a fraction the total amount of the property yearly decreed in all the courts in England. This is as nearly the case as possible throughout the Company's dominions in India; and surely a more complete condemnation and exposure of any system for the government of mankind could not be exhibited. The scale of judicial salaries in Bengal (and that at the other presidencies does not materially differ) is, generally speaking, as follows:

	Per Annum.
First Judge of the Sudder Adawlut	£ 6,000
Puisne Judge of ditto	5,500
First Judge of Provincial Court	4,500
Second ditto ditto	4,000
Third and fourth ditto	3,500
District Judge, average about	2,800
Register, average about	600

* Population Return in Reports of the Secret Committee on the Affairs of the East India Company, 1831.

† Judicial Selections, vol. ii. pp. 259, 415; vol. iv. p. 97, et seq.

Under the entire Bengal presidency there were in 1826-27, 176 judges, assistant judges, registers, &c. &c., whose aggregate salaries amounted to 378,226*l.* sterling, which gives an average for each salary of 2,149*l.* This includes individuals of every age from 18 or 20 upwards. The retiring pension after 22 years' residence is 1,000*l.* per annum, one-half of which is furnished from a fund raised by a small periodical deduction from the ample salaries of the civil officers. If the charges of education at the public expense in England, and the charges of education in India, up to the age of thirty, be reckoned, it will be found that ten years' service of a Company's judge is more costly than the similar length of service of a puisne judge of the King's supreme court, and a great deal more so than that of a King's recorder, although the first of these receives a salary of near 6,000*l.* per annum, and retires upon a pension of 1,500*l.* The King's judge is educated at his own charge, and takes a seat on the bench at the mature age of at least forty. The Indian judge receives no professional education, takes his seat at thirty, and may retire about the time of life that the other is promoted.

The late Sir Thomas Munro, in a general and deserved condemnation of the whole system, uses the following words, with respect to its expensiveness: "The whole establishment is of recent origin, and has in a few years arisen from nothing to be the most expensive judicial system in the world."*

The native judicial commissioners have no salaries, but are paid by fees and commissions levied on the suitors. The salaries of the native officers of the courts range from 12*l.* to 24*l.*, 36*l.*, 48*l.*, and 100*l.* per annum, the latter being the highest, except in a very few extraordinary instances, which constitute only exceptions to the general rule. The emoluments of the native judges or commissioners range from 60*l.* to 150*l.* per annum, being about *one-fiftieth* part of the emoluments of the English judges.

Having thus given an outline of the existing judicial system of India, and shown its errors and unsuitableness, we shall take a future opportunity of recurring to the subject, and explaining our own views of what is necessary towards the improvement, or rather the entire reconstruction of the system of Indian jurisprudence. In doing this, we shall often have occasion to refer to the very admirable report on the Judicial Establishment and Procedure in Ceylon, which has been just published by his Majesty's commissioners, and which we had not the good fortune to see until we had nearly completed the present article. The state of society in Ceylon is very nearly the same as that of the continent of India, or, more correctly speaking, differs only as one province or subdi-

* Judicial Selections, vol. ii. p. 105.

vision of India differs from another. The judicial administration is also equally faulty, and, in proof, it is quite sufficient to state that the administration in the Company's territories has generally been assumed as the model for Ceylon. Mr. Cameron is the most unrelenting crown commissioner we have met with. He lays judicial errors and iniquities threadbare, and suggests remedies with the boldness of an honest reformer, displaying as much acuteness and philosophy, as if the spirit of Mr. Bentham had been at his elbow in the woods of Ceylon. He is, in short, a kind of practical Dumont; and if the remedies he has proposed be adopted, we will venture to predict that a great inroad, at least, will be made upon that system, which has hitherto rendered Indian jurisprudence an opprobrium to British legislation.

ART. II.—NEW COURT OF BANKRUPTCY.

The first tribunal in England for the disposition of bankrupts' effects was created by the statute of 34 Henry VIII. c. 4, by which the lord chancellor, lord treasurer, lord privy seal, and others of the king's privy council, and the chief justice of either bench, or three of them at least, upon complaint made in writing, had power and authority given them by that act, to take by their wisdoms and discretions such orders and directions, as well with the bodies as with the lands and chattels, &c., of the offenders. In the following reign these exalted personages having probably found their new duties too burthensome, the 13th Eliz. c. 7, reciting that bankrupts had "increased into great and excessive numbers," enacted, that the chancellor should have power, by commission under the great seal, to name, assign, and appoint such wise and honest discreet persons as to him should seem good, to take order with the bodies and property of bankrupts.

Such was the origin of the bankruptcy jurisdiction exercised by the Court of Chancery for upwards of two centuries and a half, till the passing of the late statute. With regard to the working of the system, by the appointment, both in town and country, of special commissioners in case of every bankruptcy, there had been much just complaint. At an early period, the conduct of commissioners of bankrupts was such as to attract the animadversion of Lord Jefferies, who declared himself no friend to commissions, and instanced a case, where the expences of the commissioners and their attendants came to 400*l*.* At length it became necessary to apply

* 2 Chan. Ca. 192.

a legislative remedy, and by various statutes the commissioners were forbidden to eat or drink at the expence of the estate, or to take more than 20s. each for each respective meeting. In what manner these statutes were observed those who are conversant with the working of commissions well know.

The mode in which commissioners of bankrupt were appointed, both in town and in the country, was most objectionable. Sir Edward Coke says, that every commissioner ought to have *duos sales*, viz. *salem sapientie, ne sit insipidus, et salem conscientie, ne sit diabolus*, "that is," says Mr. Green, the writer on the Bankrupt Law, "a grain of knowledge to prevent his acting like a fool, and a grain of conscience to prevent his acting like a devil." In many cases, it is to be feared, that the persons to whom the chancellor was pleased to direct his commission, possessed neither of these grains. If a fraudulent attorney in the country wanted to grasp the substance of a failing tradesman, to favour a particular creditor, or to screen a knavish trader, he of course selected persons for his commissioners who were least likely to defeat his object. In town, it is true, the chancellor exercised his own discretion in the choice of the commissioners of bankrupt; but the manner in which this patronage was exercised was avowedly incapable of being defended. In addition to this grievance, the malversations of assignees, the frauds of pretended creditors, and the precipitate and slovenly manner of conducting business at Basinghall-street, which was, in fact, the immediate cause of almost all the other mischiefs, naturally created a strong desire on the part of the public to see the system amended. The mercantile men of the City anxiously petitioned for a change; and Lord Brougham, as the great reformer of the law, took up the subject, and dealt, not only with much of which the petitioners had complained, but also with much that they had never contemplated.

Accordingly, "An Act to establish a Court in Bankruptcy," received the royal assent on the 20th October, 1831, and a judicature was created, consisting of

One Chief Judge,
Three Puisne Judges,
Six Commissioners.

And attached to the court were,

Two Registrars,
Eight Deputy Registrars,
Thirty Official Assignees,
A Secretary of Bankrupts, with two Clerks.

For the decision of matters of bankruptcy, the act provides the following courts, each in succession having more or less of an appellate jurisdiction over its predecessor :

The Commissioners' Courts,
 The Subdivision Courts of Commissioners,
 The Court of Review,
 The Lord Chancellor's Court,
 The House of Lords.

The commissioners are to have the same powers as commissioners of bankrupts formerly possessed, except that no single commissioner is to have power to commit.

The Subdivision Courts are two, each consisting of three commissioners, who may sit in public or private to hear matters referred to them by single commissioners.

The Court of Review has superintendence and control in all matters of bankruptcy, with the same powers in such matters as the lord chancellor. It may hear appeals from the decisions of the commissioners or Subdivision Courts, may make rules, *with the consent of the lord chancellor*, for regulating the practice of the court, &c., may remove assignees, direct issues, grant new trials, and direct costs to be paid.

The lord chancellor has the sole power of issuing and annulling *fiats* of bankruptcy, and may hear appeals in his discretion from the Court of Review.

The House of Lords may hear appeals in matters of bankruptcy, if the chancellor shall deem the case of sufficient difficulty or importance; or if both parties, in any case before the Court of Review, shall desire the matter to be determined on appeal to the Lords, in the first instance, and not to the chancellor, the Court of Review may refer it to the Lords in the first instance.

Various other alterations touching the law of bankruptcy are effected by the act; but as we only purpose to consider the construction of the new tribunals, it is unnecessary to notice such alterations in this place.

With regard to what may be considered one of the most important features of the new act, the abolition of the old commissioners and their lists,* and the appointment of six persons, devoting their whole time to their duties, no difference of opinion has, we believe, ever existed. The manner, also, in which the commissioners have, since their appointment, discharged the duties of their office, has proved the good sense and benefit of the change; and had the framers of the new act confined its operation to this measure only, leaving the rest of the system to be dealt with, after

* For an account of the evils attending the old system, the reader is referred to the evidence given before the committee of the House of Commons on the bankrupt laws, in 1818, and also before the select committee of the Common Council of London. The result of this evidence is well given in Mr. Cooper's "Brief Account of some of the most important Proceedings in Parliament relative to the Defects in the Administration of Justice."

a patient and extended consideration of other contemplated reforms, they would have earned the unmixed gratitude of the country. Into the character of the other portion of the new system we shall now proceed to inquire.

At the time of the passing of the new bankruptcy act, the still greater question of reforming the Court of Chancery was under consideration, and the merits of various parts of our judicial system had been submitted to the examination of commissioners, whose labours were yet incomplete. To reconstruct a single isolated branch of that system, without reference to the course intended to be pursued with regard to the rest, savoured rather of rash innovation than of wise and provident reform. In a revision of the laws regulating the administration of bankrupts' estates, those relating to insolvency should surely have been brought under consideration. Some inquiry should have been made into the possibility of administering both insolvent and bankrupt estates under one and the same system, and of thus destroying a distinction which seems to have been devised for no other purpose than that of multiplying expence and difficulty.*

The question of relieving the chancellor from his judicial labours in bankruptcy, and of transferring them to other hands, had given rise to considerable difference of opinion amongst those who had turned their attention to the proposed reforms. On the one hand, the Chancery commissioners, in their report, gave the following decided opinion on the propriety of retaining bankruptcy as one of the portions of the chancellor's jurisdiction:

"Upon this branch of our inquiry, it now remains for us to advert to a suggestion, which has been frequently repeated, as to the expediency of transferring the jurisdiction in bankruptcy, from the lord chancellor to some other tribunal, to be constituted for that purpose. We have deli-

* From Lord Brougham's speech on introducing the Bankruptcy Court Bill, he seems to have entertained some floating idea that the Insolvent Court might be eventually united with the Court of Bankruptcy. The same thing had been suggested by Mr. Fonblanque, in his examination before the committee of the Common Council of London. But why was a new separate jurisdiction established without attempting to consolidate the two? Should such a course be determined on, what is to be done with the whole of the seven judges?

It is understood that the common law commissioners had under their consideration the whole of the law of debtor and creditor, a portion of our legal system which stands in need of much amendment. Were the originators of the Bankruptcy Court act aware of this? "I cannot conclude this important subject of bankruptcy," says Mr. Cooper, "without observing, that whenever the legislature shall undertake the task of revising our law of debtor and creditor, the necessity of which has been more than once alluded to in these pages, it is not improbable that the distinction between bankrupt and insolvent will cease to exist, and that bankruptcy and insolvency will be administered in the same tribunal. Upon what rational principle is insolvency administered by three or four individuals, without appeal, whilst bankruptcy occupies an army of judges, under the control of the lord chancellor and the vice chancellor?" What a strong detachment of judges has been added to the army by the new act!

berated upon this subject with much attention, and, in the result, we are of opinion, in common, it seems, with almost every witness who has been examined upon it, that, inasmuch as the business in bankruptcy involves in it the consideration of the most important points which can arise, either in a court of law or court of equity, it is not to be expected that the final jurisdiction in bankruptcy can be transferred from the high judicial authority of the lord chancellor, to any other tribunal, with equal advantage, or equal satisfaction to the public, and more especially since, in matters of bankruptcy, there is no appeal to the House of Lords.

"We have further to observe, that the business of petitions in bankruptcy, in its actual state, even without the amelioration which we shall presently propose, is not by any means sufficient to fill the whole time of any judge or court; and it is obvious that a judge or court whose jurisdiction should be confined to matters in bankruptcy, would be less familiar with the general doctrines of equity, administered in bankruptcy, than a judge who was habitually practised in the whole range of equitable jurisdiction; and it also appears to us, that the multiplication of courts of separate jurisdiction, must, in itself, be considered as an evil to be avoided, whenever it is not absolutely necessary.

"Our conclusion upon this subject is, that it would not be useful or beneficial that the jurisdiction in bankruptcy should be withdrawn from the lord chancellor, unless it should eventually appear that it cannot be retained, consistently with the due dispatch of the other business of the court." *

On the other hand, many persons of eminence expressed an opinion that the business in bankruptcy might with propriety be transferred from the Court of Chancery to a separate tribunal. Such appears to have been the impression of Mr. Courtenay, Sir Launcelot Shadwell, Mr. Cooke, Sir Wm. Alexander, and others; but it must be observed, that they urge no reason whatever in favour of such a change, except that it would relieve the chancellor and vice chancellor from a considerable weight of business. Now, upon an average, little more than thirty days during the year were exclusively devoted by the chancellor and vice chancellor to matters of bankruptcy,—a great deal of the ordinary business being transacted without interfering with the other affairs of the court, yet as effectually as if a tribunal was devoted to the subject. And when, by the vigour of the presiding judge, and the operation of the contemplated reforms, it might be expected that the business of the Court of Chancery would be disposed of in a regular course, there seemed to be no reason for the creation of a new tribunal. That the chancellor was a fit and proper person to exercise such a jurisdiction is admitted by the framers of the new system, who have conferred upon him an appellate jurisdiction over the Court of

* The scheme recommended by the commissioners was, that the chancellor should select ten of the commissioners of bankrupt to act as a court of appeal, three of them to sit thrice a week. This idea appears to have been suggested by Mr. Bell.

Review. Upon the whole, had an effectual reform taken place in the Court of Chancery, there can be no doubt that the bankruptcy jurisdiction might have continued to be exercised there with the greatest advantage and convenience. That the business of the Court of Chancery was so far in the process of being lightened, as to have afforded full leisure for the hearing of all matters in bankruptcy, appears from the project at one time entertained by Lord Brougham, of abolishing the office of vice chancellor. Still more would such leisure have been afforded by separating the judicial and the political duties of the great seal.

In fact, the erection of a new tribunal of bankruptcy was but multiplying that "diversity of courts," which had already created so much grievous confusion in the law; adding a new court with new rules, and a new practice of its own, to confound the lawyer and to impoverish the client. Should this species of reform be persisted in, we may expect to find a separate tribunal for matters of lunacy, another for poor laws, and so on through every branch of legal and equitable jurisdiction.

It was, however, thought necessary to separate the jurisdictions, and the question then arose, in what manner this separation might be most advantageously and economically effected. Hitherto such matters had been heard before a single judge, and we are not aware that any inconvenience or injustice had resulted from that arrangement. The decision of a single judge of competent ability, versed in the matters upon which he adjudicates, and with the knowledge that his judgment may be brought under the cognizance of an efficient court of appeal, will not in general be less valuable than the opinion of any body of judges, who divide amongst themselves the responsibility of that opinion. It must not be forgotten also, that where the judicial authority of a court is vested in several members, the chances of securing the application of the greatest talent and learning are by no means increased, in proportion to the number of the judges. The man best fitted for the situation may be placed at the head of the court; but if he be surrounded with persons of inferior capacity, each of whose voices has the same weight with his own, is the bench rendered more efficient or more respectable by the addition? The greater part of the business which is brought before what the framers of the act choose to call the "Court of Review," consists of matters involving little or no difficulty; and it is singular that, while by the alterations lately made in the courts of common law, much of the business which was formerly transacted before the full court, has been transferred to a single judge, it has been thought proper, in matters of bankruptcy, to provide four judges to perform the commonest routine duties, which were formerly discharged by one, and four-fifths of which might be done by any man of the most ordinary capacity. It

was supposed that the trial of issues would occupy some portion of the time of the new court; but for this purpose again, surely one judge would, as in the case of other trials before a jury, have been found fully sufficient.

Even supposing it to have been desirable to form a bench, consisting of several judges (*three* surely would have done as well as four), it is difficult to find any reason why the cognizance of all appeals from the single commissioners, and, indeed, of far the greater part, if not of all matters now brought before the Court of Review, might not have been conferred upon the Subdivision Courts of Commissioners. The appeal in such a case would have been in strict analogy to that from the superior courts to the Exchequer Chamber, which now consists of the judges of the courts which have taken no part in the decision appealed against. A Subdivision Court, composed of persons daily administering the law of bankruptcy in their own courts, would have formed a most effective appellate jurisdiction in ordinary business.

But it was considered necessary to erect a separate tribunal, and the "Court of Review" was established, with a chief justice and three other judges. It might have been supposed, that when so large and expensive a piece of machinery had been created, it would have been made to perform all the labour that could be imposed upon it, and that the whole of the proceedings in bankruptcy would have *originated* within its jurisdiction; for although the title of "the Court of Review" was conferred upon it, yet the hearing of appeals forms only a small part of its duties. It has, in fact, no more right to the appellation of a "Court of Review" than the King's Bench, or any other court to which an appeal lies from an inferior jurisdiction, but which, for the most part, is engaged upon business originating in itself. The Court of Chancery in all matters of bankruptcy is still the court of appeal. It might have been supposed, we have said, that the primary cognizance of all matters in bankruptcy would have been transferred from the Chancellor to the new court; but, by an anomalous arrangement, the power of issuing a commission, or, as it is now termed (for no other reason, that we can see, but for the sake of change, even at the price of taking as barbarous and unmeaning a word as legal jargon affords), a *fiat*, is by the act preserved to the lord chancellor. In practice, indeed, the chancellor has hitherto permitted the Court of Review to entertain all the questions respecting the initiation of the proceedings; and it is difficult to tell why the sole and direct power should be withheld from them. In the same manner, the chancellor alone has the power of annulling fiats (sec. 18), and of course of refusing to do so, though the Court of Review has annulled the adjudication; and the still more singular privilege of prescribing in what

manner evidence may be taken before the Court of Review (sec. 38). In another instance, the chancellor's officers have retained a power with which surely the new court ought to have been invested. While the costs of suit between party and party are to be in the discretion of the Court of Review, they are to be taxed by one of the masters of the High Court of Chancery. What possible reason can there be for preventing the commissioners or the registrars attached to the Court of Review from performing a duty for which they ought to be the fittest persons in the world, and for driving the suitors into the delay and expence of the master's office? Again, the accountant general of the Court of Chancery is to be burdened with all the accounts of this new tribunal.

While the chancellor and the Court of Review draw together, as they do at present, while the parent and his children are too much under the influence of their relative ties to quarrel with each other's operations, things may go on tolerably smoothly; but it is quite plain that under the act a future chancellor may properly claim a very large share in what seems now in practice left to the Court of Review; and that his secretary will, for the sake of his fees on affidavits, orders, &c. take very good care to assert and extend the jurisdiction. While the fiat issues from the chancellor, it is clear that he may with perfect propriety claim the cognizance of all orders and applications which relate to its initiation. At present the Court of Review (with what consistency or on what principle we cannot see) makes orders which the chancellor's officers obey, though they might just as well obey those of the Court of Common Pleas. We heard the other day an application made to the court for an order to amend a fiat. The court, after due consideration, stated, as was obvious, that it could order no such thing, having no jurisdiction over the matter; but said it would order that the applicant should be at *liberty to amend*, i. e. he might do so if the chancellor or his officers chose to let him, and of course at present they will have the courtesy so to do.

In its character of a tribunal of appeal, the Court of Review is open to much observation. Could the point be ascertained, we are strongly inclined to think that much more injustice has been caused than prevented by the appeal system, under which a case may be dragged from tribunal to tribunal, till obstinacy and length of purse secure ultimate success. The reason for affording one appeal, we have already stated; but if one court of appeal be not sufficient, why two, or why four, as under the new bankruptcy system? A question arises before one of the commissioners, who refers it to the Subdivision Court; the Subdivision Court decides it, and the party appeals to the Court of Review; the Court of Review confirms the order of the Subdivision Court, and the party appeals to a single judge after all—the lord chancellor. Upon what prin-

ciple of numbers is it, we ask (for on that principle the act seems to proceed), that a single judge, before whom such matters can now rarely arise, and only on appeal, shall have the power of reversing the judgment of seven men daily conversant with the law of bankruptcy? If a single judge be fit, to decide on appeal, why not on the original hearing? But this is not all: if the chancellor think fit, he may give the defeated party the benefit of another appeal to a tribunal, not of three judges, nor of four judges, nor of one judge, but to that most cunningly devised court of upwards of 300 judges, selected as the last court of appeal by reason of their absolute ignorance of the law and of its administration. Really, in framing a new scheme for the distribution of justice, it might have been expected that at all events the House of Lords would not be made the ultimate court of appeal.

From the decision of the chancellor in bankruptcy, no appeal lay to the House of Lords before the new statute, and it appears almost incredible that so useless and vexatious a proceeding should be now, for the first time, permitted, more especially as the suitor is now furnished with a whole bench of judges for his protection, before his case reaches what used to be the single and final tribunal.*

The appointment of the judges of the Court of Review gave rise at the time to much observation. It is a delicate and disagreeable task to canvass the personal and professional capacity of any man (and perhaps the fault lay in creating offices with remuneration insufficient to secure proper occupants), but we must be allowed to say, that in filling up these seats Lord Brougham disappointed the just expectations of the public and of the profession.†

The anxiety to give importance and dignity to the court by factitious means, seems to show a sense of its intrinsic weakness. The chief judge was called to the king's privy council, the other judges received the honour of knighthood: precedence was care-

* If a tribunal were to be framed with the nicest attention to unfitness, it could not transcend the House of Lords. Not one of the qualities required in the formation of the judicial character is to be found in its composition. Ignorance of the law, irresponsibility, partisanship or inattention, contempt of public opinion, impatience and prejudice, are the recommendations of this last court of appeal, when it is any thing more than an appeal to the chancellor. We hope to touch upon this subject again.

† With regard to these appointments, the observations of the lord chancellor on the mode of selecting the commissioners of bankrupts are not, perhaps, altogether inapplicable. "If I were to say that as a body they are the best that could be selected for the situation they fill . . . or if I were to say that these gentlemen were selected for the qualities which ought to distinguish judges of such important matters, or that they are not sometimes appointed because the lord chancellor wished to oblige some friend, I should be guilty of the grossest flattery." His lordship ends the paragraph with saying, "The subject is of the greatest importance to creditors, to assignees, to bankrupts, and to the commissioners; and it is of the greatest importance that the matter should be placed under the superintendence of the most competent judges."

fully awarded to them; and the Right. Hon. Thomas Erskine, Sir Albert Pell, Sir John Cross, and Sir George Rose, bidding the attorney and solicitor-general get behind them, walked up Westminster Hall with all judicial solemnity.

The question now arose, what was there for the court to do? They are clumsy judges, indeed, who cannot make a show of business. Thus the Court of Exchequer, in its more idle days, was used to make much of a motion of course, each of the barons applying to the case the whole force of his powerful mind. Even so in the Court of Review, a semblance of business may be traced by an accurate observer. At first the attention of their honours was devoted to the formation of new rules, which served to supply some powers which the act had failed to give them, and to raise funds for their officers, which most certainly were never designed. One of their first decisions boldly settled, that they were competent actually to hear the pending appeals to the chancellor from the vice-chancellor. Unfortunately, the lord chancellor heard the same argument, and was compelled to decide directly the contrary; and thus one source of the court's expected early employment failed, together with a considerable portion of public confidence in the sagacity of its conclusions.

By degrees a paper was formed. For an account of the business actually transacted by the court up to the 19th of March, we are indebted to the returns moved for by Sir E. Sugden.* It appears that the court had sat forty-two days, but the number of hours of each sitting could not be ascertained, no memorandum having been kept for that purpose. During this period 158 petitions and other matters had been heard, of which 111 were *ex parte*, or not opposed; so that the four judges of the Court of Review had disposed of little more than one contested case a-day; and of those cases which may be called contested (*i. e.* not consented to) a very large proportion are most likely cases that in ordinary times would not have occupied a quarter of an hour each. During the same period not a single issue had been tried.† Wearied with this *dolce far niente*, the judges had, as the return states, frequently attended at the court in Basinghall-street, with a view to assist the commissioners, and sometimes on appointments; but on one occasion only had a judge actually sat as commissioner: why he so sat is not told; but as there are

* These are given at the end of the present number.

† From a "Return of Issues in Bankruptcy, which have been directed by the Court of Chancery, between 31st December, 1830, and 31st December, 1831," we find that during this period only eight issues were tried, and of these three were questions of concerted commissions. As this point will not arise since the new statute, there are only five issues left to be tried by the four judges in a year, supposing the return to give the average number.

only courts for six commissioners, it was probably a friendly "doing of duty" for an absentee. It must have been an edifying spectacle to see the judge begging for business in Basinghall-street, or deciding on a proof which the commissioner, his inferior, might the next week rehear and overrule, on an application to expunge.

That a cumbrous, expensive, and useless piece of machinery, has been constructed in the Court of Review, will now scarcely be denied on any hand: but how it is to be disposed of, is a question of no little difficulty. The Right Hon. Thomas Erskine, Sir John Cross, and Sir George Rose, have been beguiled from their professional pursuits, and cannot be reinstated in their lost places. Sir Albert Pell might, indeed, be consigned again to that learned leisure from which he was reluctantly induced to withdraw. In the meanwhile, 9,000*l.* a-year continues to be paid out of the diminishing resources of the public, or the otherwise unnecessary imposition of fees on insolvent estates.

The necessity of appointing some person to attend the commissioners, in the capacity of clerk, is too obvious to be disputed, and the six deputy registrars created for that purpose may be considered as not overpaid by their salaries of 600*l.* a-year, if that is really all that they are to have, there being at present a vague interest in an apportionment of fees. But what duties are there, or ought there to be, which can occupy the time of the *two registrars* and their *two deputies*, assigned to assist in the laborious idleness of the Court of Review, whose salaries amount to 2,800*l.* per annum, and, with the fees to which they are entitled, probably to 4,000*l.*, or much more, for aught we know? A single officer, with the minor salary of 600*l.*, attached to the Court of Review, in the capacity of registrar, would have found his office one of emolument and leisure, though, in fact, none at all was necessary, while the secretary of bankrupts and his subordinates existed. The fee system, of which the registrars are to have the benefit, has already begun to work well in their favour. The suitor, however, has the consolation of seeing the solicitors plucked first. One of the earliest acts of the court was to impose a fee of six shillings upon every solicitor permitted to practise under the new jurisdiction, which in a short time amounted to the sum of 681*l.* 10*s.*; applicable, with some small deductions, to the purposes of the registrars.

Any person, after attentively perusing the new act, might very properly inquire, What are now the duties of the lord chancellor's secretary of bankrupts? The issuing of *fiats*, and the power of annulling them, are indeed preserved to the chancellor, for no better reason, it may be supposed, than that he might not be deprived of his secretary of bankrupts. But even this fails to

afford a pretence for retaining so expensive and entirely useless an officer. It appears, from the Parliamentary Returns, that the secretary of bankrupts "is not an officer of, or attached to, the Court of Bankruptcy," though, for the purposes of his salary, we rather imagine that he would be unwilling not to come within the clause of the statute which says, "there shall be paid as and for salaries to the judges and other *officers* for the time being, &c., *vis.* to the lord chancellor's secretary of bankrupts the sum of 1,200*l.*, to the first clerk of the said secretary of bankrupts the sum of 500*l.*, and to the second clerk of such secretary the sum of 300*l.*" And what are the duties which these three persons, "neither officers of, nor attached to, the Court of Bankruptcy" (except by their salaries), have to perform? The secretary of bankrupts himself states, that they are so multifarious that, not being limited to hours or to attendance at his office, he cannot make a precise return of them. He states, however,

"That the duties of his office consist of a general superintendence of all the business directed by the several statutes to be transacted at the office set apart for the purpose, and which require and have had his daily attendance there; that to these are to be added attendances in court, when any matters in bankruptcy are discussed there; and very frequent attendances upon the lord chancellor personally at the House of Lords, or at his own house, sometimes in the morning before his lordship goes into court, and at other times late in the evening, upon various matters of business.

"The said secretary further states, that he, like the lord chancellor's other secretaries, is one of his lordship's attendants at the House of Lords, and on occasions of state, although those attendances occupy but a small portion of his time."

We should have felt better satisfied with the secretary's return if he had stated the nature of the business "directed by the several statutes to be transacted at the office set apart for the purpose," the "general superintendence" of which requires his daily attendance. Do the two clerks at 500*l.* and 300*l.* a-year assist in this "general superintendence?" We should be glad also to be informed what is the object of the secretary's "attendances in court [what court?]" when any matters in bankruptcy are discussed there." It is somewhat singular that the secretary of bankrupts should not be able either to give a good account of himself, or to procure a good account to be given of him. Even so far back as the year 1740, the jury impannelled by the lords commissioners appointed to make a survey of the courts of justice, were unable to decide upon the nature of the office. "With respect to the secretary for the commissions of bankrupt, the jury found that he was an officer appointed by the lord chancellor by parol, took no oath of office, and was removable at pleasure. But whether he

was an officer that did, or of right ought, to belong to the Court of Chancery, they could not determine."

Before the late act the secretary of bankrupts was in the receipt of a considerable revenue from the fees of his office, and it might only have been an act of justice to confer upon him some place of profit under the new jurisdiction. But certainly something like substantial duties should have been annexed to that place. If the office of secretary of bankrupts was in any degree a sinecure, it would have been infinitely cheaper and better to have pensioned the incumbent than to have created a new place with ostensible duties only, and with a salary which must continue to be paid as long as the new judicature subsists. We should imagine that the duties of secretary and of chief registrar are not so weighty that they might not be with ease executed by one and the same person, and be liberally remunerated with the salary now payable to the secretary alone. The abuses of fees and salaries in our courts of justice are so enormous, that it is most necessary to watch with a jealous eye the formation of new judicatures.*

We have always been of opinion that it is sound policy to permit people to manage their own affairs, though a contrary sentiment often prevails. The Emperor of Russia was convinced that he understood the interests of the Poles much better than they did themselves; Charles X. was obstinate in preferring his own judgment to that of his people, on the subject of their welfare;

* The chancellor, in the whole concoction of this scheme, seems to have fallen into the hands of persons who have expended all the savings which might have arisen from the new plan, in the endowment of places of no earthly use. It is too apparent that the slight texture which connects the new court with, and makes it dependent on, the chancellor (when the fiat might just as easily have issued out of the new court at once), is a mere excuse for retaining the secretary's separate establishment. Having established a secretary and two assistants (at an expence, it will turn out, of full 3,000*l.* a-year, we have no doubt,) in order to fill up three or four printed forms *per diem*, it became necessary, for preserving the consistency and dignity of such an establishment, to retain for it the old offices where the whole business in bankruptcy was formerly transacted. What has been the consequence? The registrars of the court have been obliged to betake themselves to Basinghall-street to draw up the court's orders made in Westminster-hall or Chancery-lane, though that part of the court's business has nothing whatever to do with the commissioners' functions. The practitioners (with whom centralization is every thing, and who meet to transact the business of all other offices in and about Chancery-lane,) cry out loudly against this scheme of sending the affairs of the whole country into the City. The Court of Review answers their memorial by admitting the grievance, and lamenting that it has no funds to provide other accommodation. So that if the registrars, with all these fees (and their 600*l.* into the bargain, levied from these very practitioners), could have found a room, which they might occupy gratis, no nearer than Whitechapel, it would seem that the fees would have been kept, and the public asked to travel beyond Aldgate; and all this when the old offices, where this business used to be done, are standing vacant, haunted only by the chance visitor, who now and then looks in to bespeak a flat; but still dignified by the name of the office of the secretary of bankrupts and his clerks, who would, indeed, be telling the tale too plainly, if they were asked to avow that they have no occasion for the rooms, and that they are therefore much at the registrar's service.

and, more lately, the House of Lords showed a determination to save the people of England as much trouble as possible in the management of their own business. The framers of the Bankruptcy Court Act appear to have proceeded in some degree upon the same principle, and to have held that the creditors of a bankrupt are not keen enough to be trusted with the superintendence of their own interests. This has led to the appointment of "official assignees." Now it is undoubtedly true, that under the old system gross frauds were sometimes practised by assignees, elected by pretended creditors for the sole purpose of pillaging the estate. Mr. Montague mentions an instance in which ten debts had been most improperly proved, to control the choice of assignees; and such attempts were probably often successful. The fair creditors were thus overpowered, and prevented from exercising their free judgment and discretion. In addition to this, the difficulty which existed, from the mode in which bankruptcy business was conducted, in bringing to light the malversation of assignees, gave rise, in many instances, to much abuse. But, under a better regulated system, the checks upon the conduct of assignees must have been such as most materially to lessen, if not altogether to prevent, the misapplication of the bankrupt's effects. The expense entailed upon an estate by the appointment of an official assignee, will outweigh, in very many cases, the benefit derived from it. At all events, we do not see why it would not have answered every useful object if an additional commissioner or auditor had been appointed, whose duty should be confined to a general inspectorship of assignees' accounts; and to whom, in case of any doubt existing as to the application of funds, a reference as to the account should, under certain regulations, be directed. At present the charges of an official assignee will fall heaviest where there is the least occasion for his services. In all the great estates, where large sums of money are to be distributed, and where the assignee's commission is also, of course, large, the duties of assignees have always been imposed upon men of respectability and honour, whose conduct never required the control of a hired inspector. It was in the small estates that the opportunities for peculation occurred; and, to prevent this, the creditors under every estate are to be saddled with a most heavy burthen. It is extremely hard that creditors should be compelled in every instance to purchase the services of an official assignee; for, although it may be very well to provide such a person to whom, if they think it needful, the creditors may have recourse, yet why, if they choose to rest satisfied with their own diligence, they should be obliged to rely on the diligence of another, we do not clearly comprehend. Companies of persons, as numerous as the creditors of any estate, contrive to conduct their affairs without the assistance of official

advisers; and if such bodies are competent to select proper persons to manage their millions, we really cannot see why the creditors of A, B, or C, should be prohibited from exercising a similar discretion. In one instance the creditors actually petitioned the Court of Review that they might be allowed to have the estate managed by their own assignees, without being put to the charge of the official assistant; but the answer was, that the act was imperative. In another, we are told, they superseded the fiat to put an end to such a charge.

The subject of country commissions still remains to be considered. Grievous as were the evils attending the system in Basinghall-street, they were yet greater in the country, where greater want of publicity afforded better opportunities for abuse. For a considerable period there appears to have been no fixed rule with regard to the number or character of the persons whose names were inserted in country commissions, the number generally varying in proportion to the magnitude of the estate. Towards the end of the seventeenth century country commissions were usually directed to seven persons, two of whom were often esquires of the quorum; and the commissioners were ordered not to act unless in conjunction with one of these. No oath was required to be taken by the commissioners with regard to the execution of their duties, and the various enactments made to prevent abuses were easily evaded. If the country commissioners had contented themselves with infringing the acts against eating and drinking at the expence of the estate, it would have been well, for even commissioners can only swallow a limited quantity of wine and venison; but they contrived to set at nought the provisions against unnecessary and extravagant fees, and multiplied meetings for no other end than that they might receive their additional guineas. As the law forbade them to receive more than one fee for one meeting, they were accustomed to appoint several meetings for the same morning; and as the business of one would probably occupy the whole of their time, the others, after producing each its pound, were necessarily adjourned, to bear again, on some future day, another harvest of golden fruit. To such an extent was this practice carried in town, that one of the London commissioners boasted of having received *thirty sovereigns* on Saturday morning. In addition to the multiplication of meetings, it often happened, in the country, that larger fees for each meeting were taken than was allowed by law, and even absent commissioners did not scruple to receive the fees which were only due on their attendance. Sir James Bland Burgess, writing on this subject in the year 1783, says,

“Commissions which are executed in the country are on a still worse footing. Compared with these, the confusion and the imperfections of a town commission are absolute regularity and precision. It were unne-

cessary to enlarge on this topic, of which many and grievous complaints have frequently been made. One circumstance alone will be sufficient to impress on the mind of the reader an adequate idea of the manner in which they must probably be conducted. A country attorney when he takes out a commission inserts the names of his own commissioners. If he is an honest man, his choice will probably be judicious and respectable. If he is not, and if he should happen to have any particular purpose to serve, it is not difficult to foresee what are the probable consequences of such a nomination."

An attempt has been occasionally made to remedy these evils. Lord Rosslyn, in imitation of the London scheme of commissioners, named certain persons at Birmingham and in other places, to whom alone he permitted commissions to be directed. The practice, however, was abandoned by his successors, and the attorney still nominates the commissioners he likes best. Lord Eldon in his Bankruptcy Act made the mischief in point of expence exactly double; for that act requires *two* barristers to attend each meeting instead of *one*, as was usual before, and gives them each two pounds instead of one; so that every country meeting now costs five pounds instead of three. The new act adopts a scheme resembling that of Lord Rosslyn. The judges on their circuits *may* be directed by the lord chancellor from time to time to return to him the names of such number as he shall think fit to require of barristers, solicitors, and attorneys, practising in the counties to the circuits belonging; and upon such persons being so returned and approved by the chancellor, the country fiats shall be directed to some one or more of such persons, in rotation, to act as commissioners, according to the district or places for which such persons shall be returned; and the chancellor is to have the power of removing any person from the lists.

Nothing has as yet been done towards carrying these provisions into effect, and we greatly doubt whether, when put into practice, they will produce any substantial amendment in the system. The plan of permitting practising barristers to act as commissioners is still retained, with all its attendant evils, amongst which not the least is, that every barrister and solicitor in the country is placed in a state of expectancy and dependence on the chancellor's favour. Here, again, we have cause to lament the precipitancy and want of consideration with which the new act was concocted. The business of administering insolvent estates is done by itinerant commissioners, or rather judges, whose whole time is devoted to the performance of their duties, and who have no private interests to affect them. We cannot see why a similar arrangement might not be made for the distribution of bankrupts' estates, by which not only would a vast saving of expence be effected, but justice would, without doubt, be much more satisfactorily administered. Considerable alterations

in the bankrupt law would probably be required, before this project could be carried into execution; and, indeed, it should not be attempted without a careful and elaborate investigation into the law of insolvency generally.

The summary of our objections to the Bankruptcy Court act is this:—It has been framed without reference to other branches of the law with which bankruptcy is intimately connected, and without consideration of those reforms which must take place in other departments. It creates an entirely new tribunal, and thus multiplies the vexations and difficulties arising from a variety of different courts. It establishes an unnecessary number of courts, with a complicated system of appeal, terminating in the worst appellate jurisdiction. It separates bankruptcy from the chancellor's court without any sufficient reason, and confers the jurisdiction upon a court consisting of four judges, for whom it affords no adequate employment. It reserves, at the same time, certain portions of the jurisdiction to the chancellor, also without any sufficient reason. It appoints a number of useless and expensive officers, more especially the chief and other registrars attached to the Court of Review, the secretary of bankrupts, and his first and second clerk. It compels creditors to accept the services of a hired assignee, whose superintendence is unnecessary in nine cases out of ten. And, lastly, it makes no proper provision for the execution of the bankrupt law in the country. Much expence which might have been saved, much complication which might have been avoided, much change which cannot be permanent—these are our objections to the Bankruptcy Court act.

At the same time the measure has its merits. It has introduced reform where reform was most needed; it has abolished some grievous long standing abuses; and though not itself what could be desired, may lead to all that is desirable.

We cannot dismiss this subject without adverting to the painful position in which all the friends of reform (and particularly all such as have been accustomed to look to Lord Brougham for its promotion) felt themselves placed at the moment of his temporary resignation of office. If their feelings were of a painful character, what must his have been at the reflection that he had enjoyed and neglected golden opportunities, which might never return, of prosecuting useful plans of practical reform; and that all which could be said of his career would be, that he had driven through parliament one of the most questionable measures which it had ever sanctioned; that he had given his assistance in the prosecution of no one of the many plans of utility which the various commissions of inquiry have proposed; and, above all, that he, who had been loudest in his reprobation of Lord Lyndhurst's inactivity, left the Court of Chancery exactly as he found it, with no one abuse

corrected,—with no useful measure with which his name could be associated, or his occupation of the office remembered. What can be gathered from his parting address, but that all the plans of practical reform which have been laid before parliament, which have been actually embodied in bills printed and circulated through the profession, were never intended to be prosecuted; or at least that there has never been so much attention given to them as to make any impression on his lordship's mind, or to induce him to think the subject worth even a parting word?

By a rare good fortune, he has been placed in a situation to retrieve that character which, if his retirement had been final, would, we fear, have been injured beyond any ordinary means of reparation. May he take warning by his narrow escape, call honest counsellors around him, and rest assured that his lasting honour is to be derived from a patient attention to the exposure and remedy of the infamous abuses among which he finds himself; that ambitious speculative schemes of court-creating are more likely to bring him disappointment and reproach than credit; that *one* duty lies before him, which at least is plain and obvious; and that there can be no excuse if he leaves it unperformed!

ART. III.—THE REFORMATION OF CRIMINALS.

It has been said with great truth that “the abhorrence of guilt, in itself so laudable, is of all passions the most liable to be carried to excess, and to become the unsuspected pretext of crimes yet more enormous.” Pleasant no doubt it is to gratify our passions with a clear conscience, and to flatter ourselves with the belief that anger, vindictiveness, and oppression, may not only be justifiably but laudably indulged. To such a length are these feelings carried, that at last the scourge, the gibbet, and the rack are regarded with complacency by the indignant legislator as the valuable instruments of his penal retributions.

Feelings of exasperation against criminals must indeed exist in society, and under due regulation such feelings may be beneficial. But what place have they in the bosom of the legislator, whose duty it surely is to approach his task with a dispassionate mind? How seldom this is the case, and how rarely the attempt is made in penal legislation, to apply any other principles than those of force and terror, the code of every country in Europe sufficiently attests.

From the same feeling of unrestrained antipathy towards criminals, the subject of prison discipline is one which excites little

or no interest in this country. We look upon the criminal as an outcast, who has forfeited all claim to our regard, who has by his own guilty act incurred the just penalty of the law, and with whom our only concern is to see that he duly suffers the full measure of the punishment awarded to him. In the welfare of the offender, spiritual or temporal, we lose all interest; and when at length he is dismissed from his cell with the stigma of guilt upon him, we cautiously shun him, and thus compel him to fresh crimes and fresh punishments. This course is one of so much facility, that arguments are never wanting in its support. These it may not be altogether useless to examine, stating them for that purpose broadly and fairly. At all events, the discussion may be the means of directing some degree of attention to a subject, which, to the disgrace of this country, seems to be treated with increasing coldness and neglect.

It is resolutely asserted by some persons, that the reformation of criminals is, in itself, an impracticable and visionary scheme. It is said that the power of habit is so great, that a man who has become accustomed to the commission of crimes can never be divested of the propensity. The power of habit is great, and it is upon this principle that the reformatory system is established. Conceding that the proneness to crime may become so inveterate in some instances, as to render the chances of amendment extremely small, it must yet be granted, on the other hand, that of those who are detected in the commission of offences, a very large proportion are arrested, if not at the commencement of their career, at all events before they are become hardened criminals. How can it be said of these persons, that their evil habits are inveterate? Can it be forgotten that the habits and sentiments of the community at large are all on the side of honesty, and that before a man commits a criminal act, he has to struggle with and overcome some of the strongest feelings that can actuate the human mind? Accordingly, it will be found that it requires either some very powerful motive to lead to the commission of crime, or that it proceeds from that evil education, which is found in the society of hardened criminals, and for the bestowing of which the greater part of our gaols may be considered as so many universities. We know the difficulties of purifying the mind, because the process is brought before our eyes, but we never see the difficulties of corrupting it. In by far the greater number of instances the habits of the individual have originally been honest, until they have been overpowered by too strong temptation, the removal of which alone might in many cases be sufficient to restore the influence of better principles and feelings. What is the proportion of offences against property committed under the urgent temptation of immediate want, where the criminal himself has felt the most extreme reluctance to the

commission of the act? What again, the proportion of those offences committed by persons who have been seduced by the influence of evil example? Will it be said that the starving mechanic, who has purloined a loaf to feed his famishing children, is so enamoured of crime, that no process to which he can be subjected will free him from his evil propensities? or that a young boy who has yielded to the persuasions, or, perhaps, to the threats of some hardened offender, is incapable of amendment?

We have said that it is upon the influence of habit that the friends of a reformatory discipline depend for the success of their attempts. That which is acquired by habit is lost by disuse, and new habits will invariably assert their influence over the mind. It is urged that we find it difficult to depart from what has become familiar to us, that we cannot put off our habits according to our pleasure, and that it is in vain for us to struggle against their empire. It is said,

Ad mores natura recurrit
Damnatos, fixa et mutari nescia.

It seems to be forgotten, in the application of these reasonings to the subject of prison discipline, that there is not one case in ten, or more probably one in a hundred, where the original habits of a criminal were not untainted with vice. The evil habits, the *mores damnati*, are an after-growth, and may be made to yield to the renewed influence of earlier impressions. It is doubtless a difficult task for a person under the actual operation of firmly fixed habits, so far to master them as to place himself in a situation where antagonist habits may be acquired. We rarely, or never, find a confirmed drunkard, or a professed gambler, reformed; they become the slaves of custom; and at length are really incapable of putting in motion any scheme which might tend to their reformation. But how different is the case of the imprisoned criminal. No longer master of his own actions, he becomes subject to the will of those who may submit him to all the influences of a perfectly new life. Could the gambler be restrained from the gaming table, or the drunkard from his cup, day by day the allurements of hazard or of intoxication would become less powerful, and a year's compulsory absence from the billiard-room or the tavern, with a strict observance of a regular and temperate mode of life, might well be expected to create new and better habits. No change of habit can be produced without some adequate cause; but of this very simple fact the opponents of reformatory discipline seem perfectly ignorant. Because the habits of a man who remains surrounded by the same circumstances are unchanged, they argue that the habits of another, who is exposed to the influence of perfectly new circumstances, must continue unchanged also. Thus

we are told by Mr. E. G. Wakefield, and we mention him, not because we think that his *reasonings* are at any time very deserving of attention, but because his authority has been relied upon by some of the opponents of reformatory discipline, that "once a thief is always a thief."

"I am perfectly satisfied," says he, "that the number of cases in which man, woman, or child, once a thief is not always a thief, are so few as to be undeserving of notice. But few persons who indulge in the excitement of gambling ever conquer that propensity; but thieving is a species of gambling far more agreeable than any other game of hazard; for two reasons, first, because the persons who follow it are generally of a class who could not live honestly, otherwise than by hard and constant labour, than which nothing is more irksome to all who have once indulged in idleness; and secondly, because in the game of robbery, the player *always wins until he loses all*. Whatever the cause, however, the fact is certain, that a thief is hardly ever—I am tempted to say never—reformed."*

"But," say the opponents of reform, "it is idle to indulge in speculations like these upon the motives which urge people to the commission of crime, and upon the influence which argument must have upon their minds. Look to *facts*, observe the number of the criminals who are *repeatedly* convicted—look at the history of those who, in spite of renewed punishments, continue to live a life of crime. Listen to the judges of our criminal courts, as they warn the prisoners on their second conviction, that one more chance will be given them for amending their conduct, and see the same offenders, the next quarter after their discharge, again brought up to the bar, and then talk to us of reformation!" It is true, such instances are perpetually occurring, and as long as the present system of prison discipline exists must continue to occur. What amendment is worked in a prisoner committed to one of our gaols? In what manner are either his principles or his habits improved? He is thrown into the society of the most depraved malefactors—he is permitted to associate with those who are adepts in every criminal art, and who take a pleasure in corrupting the minds of their companions—he is exposed, not to the casual influence of such an infection, but to constant, daily, and hourly contact with the corrupt. If he is visited by the chaplain of the gaol, it is merely for the space of a few minutes, which are soon consumed in exhortations, which, if they produce even a temporary effect, are speedily banished from the mind. Then how are his habits improved and corrected? He is placed upon the tread wheel, a mode of occupation by which he learns nothing, and

* Facts relating to the Punishment of Death, p. 76.

which, even if he could become habituated to it, he could not pursue upon his discharge from confinement. Every effort is made to render labour distasteful to him, and when at the expiration of his sentence he is once more turned forth upon the world, he has probably lost, not only the manual skill he before possessed, but the character which would have enabled him to procure an honest livelihood, and even the wish to obtain it. Is it then wonderful that thus deprived of the ability, the opportunity, and the desire for a better life, he should again resort to crime for his subsistence? It is almost impossible that a man thus situated should be honest.

Another prominent objection to the reformatory system is, that it deprives punishment of its most valuable consequences, *terror* and *example*; and that a prison under the new discipline, instead of being viewed by the criminal, as it ought to be, with abhorrence and dread, is only regarded as a kind of comfortable refuge, the inmates of which are sure to receive wholesome food, clean lodging, and kind treatment. It is said that even conceding the question of the practicability of reformation, the system is injurious, as putting an end to the great sanction of all penal laws. No man would hesitate to commit an offence, on the slightest temptation, if he were confident that upon discovery, so far from being made to suffer, his condition would be actually bettered. Even now, it is much to be feared, that the situation of the prisoners in many of our gaols is preferable to that of the honest and industrious poor without their walls. Let us not, therefore, say the adversaries of improvement, commit so great an injustice as to render the vicious criminal more comfortable than his honest neighbour—let us not frame so absurd a system as, under the name of punishment, to bestow a bounty upon crime.

If the effect of a reformatory system were such as is here attributed to it, it might indeed be objected to with reason. But let us endeavour to estimate the mode in which such a system operates upon the minds of those who are prone to the commission of crime. Let us take the strongest case, that of the old and hardened offender: He has been accustomed for years to a life of reckless and criminal indulgence; pursuing no honest occupation, his time is alternately devoted to the devising and executing schemes of villainy, and to enjoying in idleness the fruits of his successful crimes; long habituated to irregularities of every kind, sobriety, order, and labour have become odious to him. What then is the punishment which such a person would most dread—imprisonment in a gaol governed according to the old system, where he may indulge in idleness and irregularity, and in a free communication with persons of vicious character like himself; or imprisonment in a penitentiary, where he must undergo hard and improving labour,

an undeviating regularity of life, complete seclusion from criminal society, and constant moral and religious instruction? Can it be doubted which of these two modes of life would be most agreeable to a man of depraved habits, or which of them would hold forth the most exemplary warnings from crime? It is true, that after having been subjected for some time to a well-directed system of prison discipline, the irksomeness of the new mode of life will gradually pass away, and the newly-formed habits will in the end render decency and order and labour agreeable: but this is the most valuable quality of the system—that while it is a terror to those without the walls of the gaol, it has the effect of winning over the criminal under its influence to the love of an amended life. These are not the mere speculative reasonings of a theorist—they are the teachings of experience. In the United States of America, where alone the penitentiary system has had the advantage of a fair trial, the prisons were never so much dreaded by criminals as under the new discipline. Few of the state prisons appear to be under better management than that at Charleston. The governor of that state, in his message, speaks of it in terms of high commendation. “Separation at night, silence, order, industry, respectful and cheerful obedience among the convicts, harmony, mildness, and authority among the officers, are its leading features. But is there no danger, in making a state prison a school of reform, that you will make it a lure to vice, a place which villains will covet, and commit sin that they may inhabit? Not at all. There have not been so few persons committed to the state prison at the spring term of the different courts in the commonwealth, and at the monthly sittings of the municipal court in Boston, for many years, as within the last three months. The number of persons committed to this prison annually, too, is diminishing rather than increasing. *The prison was probably never before so great a terror to evil doers as it is now. Good men look upon it with complacency; bad men with abhorrence till they become good.*”* The discipline adopted in the New Penitentiary at Philadelphia is said to produce the same salutary effects. “Great terror,” say the inspectors, “is known to have been impressed upon the minds of the convict community by this institution, and the small number of prisoners sent from the eastern district, including a vast majority of the population of the state, together with the careful manner in which, it has been ascertained, the most knowing rogues avoid committing those offences which would subject them to its discipline, may be regarded as powerful reasons for extending its operations to those penitentiary offences at present not within the statute.”†

* Sixth Report of the Boston Prison Discipline Society, p. 28.

† Ibid. p. 79.

It is not unusual to hear it said, in answer to those who urge the necessity of altering and improving the discipline of our gaols, "Why bestow your sympathy upon the worst part of society? Why exert yourself in favour of the worthless and the wicked, when thousands of more deserving objects claim your regard? Let the criminal drink of the cup which he has himself filled; and let pity and assistance be reserved for the innocent." By those who take a more extended view of the interests of society, arguments like these will be estimated at their real value. The charity which relieves virtue from want will not go unrewarded; but the benevolence which seeks to cleanse the soul, to restore the moral health, and to transmute those who were the dread and the disgrace of society into upright and useful members of the community, is surely of higher price. What would be said of a father who, instead of lending his best endeavours to reform the habits of a guilty child, should reserve all his sympathy for, and lavish all his attention upon the advancement and improvement of his happier children? As a guilty child is a reproach to his parent, so is every criminal a disgrace to the state; and it therefore behoves the government of every country to labour with the utmost diligence and anxiety to effect the reform of the criminal. But independently of the obligation which rests upon society, as a work of charity and of duty, to apply itself vigorously to the repression of crime, it is no less incumbent upon it from a regard to its own interests. When the degree of apprehension, distrust, personal suffering, and pecuniary loss, resulting from the never-ceasing commission of crime is considered, it is in vain to tell us that we are misplacing our sympathy when we are endeavouring to effect its suppression. What subject, indeed, is there that can compete with this in its vast importance?—a subject which involves in itself the application and efficacy of all the great principles of religion, of morals, and of human legislation.

The expence incurred in carrying into effect an extensive system of prison discipline has been regarded by some persons as a bar to its adoption. The already heavy burthen which the maintenance of criminals throws upon the country would, it is supposed, become still more weighty by the introduction of such a system; and the Milbank Penitentiary is usually referred to as a proof of the costliness of such establishments. During the year 1830, it appears that the gross expence of the penitentiary was upward of 20,000*l.*, while the earnings of the prisoners only amounted to 2,197*l.* 13*s.* 10*d.*, leaving a deficit to be supplied by the country of nearly 18,000*l.* When we consider that there are only about 600 prisoners in this establishment, it is not wonderful that the expence should be regarded as enormous, and that the adoption in other places of the system pursued there should meet with objections. But that the

Milbank Penitentiary is no just criterion with regard to the expences of such an institution is now quite manifest. The experience we have derived from America is sufficient to set this point at rest. After making the most liberal allowance for the difference in the value of labour in that country and in our own, it is perfectly obvious, from the facts which we shall presently state, that in the gaols of this country there is the most gross mismanagement in turning to account the labour of the criminals. In this, as in other cases, the country, being a ready paymaster, is made to bear the burthen. The interest of any individual in reducing the enormous expences of our gaols is so small, that the subject attracts no attention; and the "hard labour" imposed upon the criminal is only regarded as the means of rendering his imprisonment more painful to him, and not as the source of productive results.

In America, however, where the expenditure of the public money is viewed with more jealous eyes, an attempt has been made to free the community from the charge of maintaining its unworthy members. In many instances, where an efficient system of discipline has been adopted, it has been attended with the most successful consequences. In the latest report of the inspectors of the prison at Auburn, laid before the legislature of the state of New York, in January last, the following is the statement of the expenditure and income of the institution from the 1st Nov. 1830, to the 30th Sept. 1831.

Earnings of the convicts as charged to the contractors	Dollars.	Cts.
	36,209	44
Expenditure for the general support and repairs of the prison (including the amount paid to discharged convicts)	34,405	61
Leaving a balance in favour of the prison of	1,803	83

Another instance of successful management is found in the prison at Wethersfield, in the state of Connecticut. This institution has only been in operation as a penitentiary for about four years, and during that period the state has gained a clear profit by the labour of the prisoners of 17,139 d. 53 c. This balance remains after deducting, not only the expences of food, clothing, fuel, medical attendance, and incidental expences, but likewise the salaries of the officers. During a similar period of time, the same prison, under the old system of management, cost the state, over and above the labour of the criminals, the sum of 4,338 d. 78 c., making a difference between the old and the new prison, in 3½ years, of 41,478 d. 31 c. in the keeping of an average of about 150 convicts.*

* Sixth Report of the Boston Prison Discipline Society, p. 41.

Nothing can more decisively show the confidence existing in America with regard to the success of the productive labour system, than the manner in which the state prison at Frankfort, in Kentucky, is managed. The keeper contracts with the state to support the prison, on condition of receiving the proceeds of the convicts' labour, binding himself, at the same time, to pay over to the state one-half of the excess of the income above the expenditure. In five years that excess has amounted to several thousand dollars.*

With facts like these before our eyes, will it be contended that the inmates of an English gaol are incapable of producing an income amounting to more than one-tenth of the expenditure of the prison, as in the case of the Milbank Penitentiary? Is the difference of the value of labour in England and in the United States, as one to ten? In fact, even in this country, instances are not wanting of gaols contributing largely to their own support, as was the case at one time in the Preston House of Correction,† and in some few others; but the ignorance and inattention of the magistracy have checked even these few laudable attempts.

We have sometimes heard a singular argument adduced against the employment of criminals in productive labour. It is said to be robbing the honest and industrious poor of their work. If it be a beneficial thing that 500 convicts should be supported in idleness, or employed in unproductive labour within the walls of a prison, upon what principle is it that it is not beneficial that the same persons should be so supported or employed when at large? It is true, that if one-half of the labouring poor were to be deprived of the power to work, the remaining portion would find wages higher, and employment more easily procured; but will it be contended that it would therefore be proper to tie up the hands of half the labouring population, and to compel the rest of the community to support them?

After all, speculative reasonings on such a subject as that of prison discipline are necessarily unsatisfactory, and the argument which we sometimes hear from the opponents of the system, "Show us a reformed criminal!" is not an unreasonable one. Let the system then be tried by a reference to authenticated facts, and we shall be strangely surprised if, upon such a trial, the efficacy of a

* Sixth Report of the Boston Prison Discipline Society, p. 80.

† During the year ending 2d May, 1821, the total amount of the earnings of the prisoners in this gaol was 2,149*l.* 13*s.* 5*d.*, while during the same period the cost of their food was 1,988*l.* 8*s.* 5½*d.* The average number of prisoners was 349. The work carried on was chiefly weaving, by which each prisoner earned on an average 5*s.* per week. Of 150 looms employed, a considerable portion were of the prisoners' own manufacture, made from timber purchased wholesale. This excellent system met, we believe, with little encouragement. An account of the Preston House of Correction at this time may be found in the 1st volume of *The Inquirer*, a work devoted to philanthropical objects, which was unfortunately discontinued after the publication of the 4th number.

well-directed scheme of prison discipline, founded upon the reformation of the offender, is not found to be most striking in the repression of crime. In the United States public opinion is decidedly in favour of the system, and not a year passes without numerous facts being added to the arguments in support of it. The reports of the inspectors of the various state prisons give ample testimony of the successful effects of such a discipline when rightly directed. "Many years' experience," say the inspectors of the New Penitentiary in Philadelphia, "in the practical operation of the penal laws and prison discipline, on the part of most of the inspectors, and the particular knowledge of the board in the actual operation of this institution, upon the moral and physical powers of the prisoners, and upon the public interests, have established a conviction of the humanity and excellence of this system of penitentiary punishment; and that its permanent establishment and extension to all crimes and misdemeanours punishable by imprisonment at hard labour, under the existing laws, as soon as an adequate number of cells can be provided, will be consistent with the purest principles of philanthropy, and calculated to advance the interests, and sustain the elevated character of the commonwealth of Philadelphia."* The inspectors of the state prison at Auburn are equally decided in their opinion. "Our confidence," they say, "in the decidedly reformatory tendency of the system, when allowed its free and full operation, unembarrassed by counteracting causes, remains unshaken; and if it even fall into disuse or disrepute, we are persuaded it will be owing to an imperfect application of its simple principles, and not to any inherent defect in the system itself."† Numerous instances of individual reformation will be found in the document relative to prisoners discharged from the state prison at Auburn, published in our last number.

It will be observed that in examining the question of the practicability and efficacy of the reformatory system, we have not spoken of the mode of carrying that system into execution. Various schemes of prison discipline have been resorted to with various success, and each has had its advocates, who, while they agree with regard to the desired end, have differed on the subject of the means. While some few advocate the adoption of strict solitary confinement, such as it existed at one time in the Philadelphia state prison, and for a short period at Auburn, others restrict the solitary confinement to the night, allowing the prisoners to work together during the day, but without verbal communication, the discipline now adopted at the Auburn state prison. In England, the system of separation by night, and restricted communication

* Sixth Report of the Boston Prison Discipline Society, p. 71.

† Report to the Legislature, Jan. 7, 1832, p. 4.

in the day, has never been adopted; and little more has been done towards the formation of anything like a system of discipline than the classifying of prisoners, according to their age and offences, and the putting them upon the tread-wheel. With regard to the merits of these various systems, much difference of opinion may reasonably exist. An inquiry into the manner in which they have worked, and the results to which they have led, could not fail to prove highly valuable, and we shall in an early number enter upon the consideration of this important subject.

ART. IV.—THE JUDICIAL ESTABLISHMENTS OF FRANCE.

There are few subjects connected with jurisprudence which afford a wider field for inquiry and elucidation than the machinery by which, in various countries, justice is administered. Even of our judicial establishments,—of their number, the extent, and nature of their jurisdiction, and their vast variety,—little is known by the public at large; while of the mode in which the tribunals of foreign countries are constituted, we are absolutely ignorant. In the following pages will be found a Sketch of the Judicial Institutions of France; and those of the other principal countries of Europe will be treated in the same manner. An opportunity will thus be afforded of contrasting the different systems, and of comparing them with our own, of which we shall, in an early number, take the opportunity of giving a similar sketch.

At the head of the judicial establishments of France is the king, from whom all justice is supposed to emanate, in whose name, by the terms of the Charter, it is administered, and by whom the judges are appointed. To preserve this connexion, a separate office in the ministry was created; the officer at the head of which is intitled *Garde des sceaux, Ministre Secrétaire d'état au département de la justice*. He has the power and the responsibility of regulating the courts, of nominating the judges, and of recommending criminals to the crown for the exercise of its right of mercy and commutation of punishment.

In France the courts are divided into civil and criminal. The commercial interests of the community, though within the jurisdiction of the civil courts, are intrusted to what may be called the commercial jurisdiction; but this distinction is not always strictly preserved. The criminal courts are divided into the ordinary criminal courts, and the extraordinary or special.

Besides these two branches of jurisdiction, there exists in France

a third branch, called the administrative jurisdiction,* which, strictly speaking, may be said to be an encroachment on the province of the other two. Its title to the character of a tribunal, although it is invested with the power of deciding in some few cases of dispute, is doubtful, and the consideration of it may be fairly omitted for the purposes of the present article, the object of which is to present a simple statement of the nature and constitution of the civil and criminal tribunals, constituting by themselves the whole of the judicial establishment of France. For this purpose we propose, in this and the next number, to offer to our readers a complete list of all the courts and tribunals of the kingdom of France.

These tribunals are as follows:—

For the EXECUTIVE ADMINISTRATIVE department: the *conseil d'état*, the *cour des comptes*, the ministers, the *préfets*, the *sous-préfets*, the *conseils de préfecture*, the *conseils universitaires*, the *maires*, and *adjoints*, and some special commissions; as the *commission du sceau*, the *commissions de dessèchement*, &c.

For the civil: the *cours royales*, the *tribunaux de première instance*, *de commerce*, the *justices de paix*, the *conseils de prud'hommes*; independently of the arbitrators or judges, chosen voluntarily, and sometimes compulsorily, by the parties, and who properly have no public, or at least no permanent, character.

For ordinary criminal jurisdiction: the *cour des pairs*, the *cours d'assizes*, the *cours royales*, the *tribunaux correctionnels*, the *tribunaux de simple police*.

Besides these, there exist for the cognizance of special or extraordinary criminal matters, the councils of war and the councils of review, or military tribunals of the army; the maritime permanent councils of war, and councils of review, instituted for taking cognizance of the desertion of sailors; the maritime councils of war for the trial of crimes committed on board of vessels, or by the guards of the convicts; the maritime tribunals for crimes or offences committed in the military sea-ports or the arsenals of the state; the special maritime tribunals for crimes or offences committed in the hulks or galleys, or by convicts condemned to work at the public works; lastly, the *cours prévotales*, those bloody courts, which fortunately have ceased to exist, but which might be re-established if it were thought necessary.

The supreme court, or *cour de cassation*, has a supreme jurisdiction over the whole, with some trifling exceptions, which we shall explain more fully hereafter. There is no appeal or escape from the sentences or decrees of this court, except the chance of obtaining pardon.

* For an account of the nature and duties of this jurisdiction, see an admirable article in No. VI. of *Rev. Franç.* p. 58, sur les Jurisdictions Administratives, by the D. de Broglie; and see also the work of M. Macarel, des Tribunaux Administratifs.

The magistrates in France, as we mentioned at the commencement, are named by the king, at the recommendation of the *garde des sceaux*; but when once named they are irremovable. There are, however, some exceptions to this principle; for instance, the *juges de commerce* and the *prud'hommes* are not nominated, but only instituted by the king; they are only elected for a certain time. The *juges de paix*, although nominated by the king, are not irremovable. The same is the case in regard to the military judges and some others.

All the judges, before they enter into their functions, take the following oath, the form of which might give rise to several critical observations:—"I swear to be faithful to the king, to keep and to enforce the laws of the kingdom, as well as the *ordonnances* and *règlemens*,* and to conform to the constitutional charter,† given by the king to his people."

Almost all the judges enjoy, as judges, a salary subject to a deduction of two *per cent.*, which is reserved for the benefit of a particular fund of pensions for the judicial establishment. After thirty years of public and effective service, ten of which, at least, must have been in the judicial establishment, the judges have a right to a pension equal to half the average salary which they have received in the last three years. This pension is increased one-twentieth for every year of service beyond the thirty years. The pension may be granted before this period to any magistrates who, by accident or infirmity, are incapacitated from continuing their functions; but, in that case, for the first ten years it is only one-third of what would have been granted after thirty years' service; that is, consequently, a sixth part of the average salary, calculated as above-mentioned. It is only increased one-thirtieth for every year of service above ten years.

In cases of severe and permanent infirmity, which incapacitates them from continuing their functions, the judges may be compelled to retire, after notice has been given to the court or tribunal to which they belong; but in that case they can claim the pension due for their past services.

The widows of magistrates have, in some cases, a right to a pension, which, however, is less than would have been due to their husbands. This reduced pension does not always belong to them as a right; but may sometimes be granted or refused; as is also the case with the assistance sometimes given to the orphans of magistrates.

* As a principle and general rule, the *ordonnances* and *règlemens* are in themselves not binding. They only take their authority from their conformity with the text or the spirit of the law; this has been frequently decided.

† The constitutional charter is the law of laws; it should have been placed in the first line.

The judicial establishment of France does not consist solely of judges, but also of a class of persons called *officiers du ministère public*, who are attached to the greater part of the courts and tribunals. Almost all the rules which we have just laid down, relating to the nomination and the oath of the judges, their salary, pensions and allowances, apply equally to these functionaries, with the exception of the principle of irremovableness. We shall notice this subject again.

Another class of officers, called *ministériels*, such as *avoués*, *greffiers*, and *huissiers*, as also the *jurisconsultes* and *avocats*, contribute to the proper distribution of justice; we shall explain separately the particular rules by which they are governed.

The tribunals in France, with the exception of those which belong to the criminal and commercial jurisdiction, do not sit during the whole course of the year. They have a vacation which lasts from the 1st of September to the beginning of November; but during this interval there remains for the dispatch of causes, even purely civil, a *chambre des vacations* in every court or tribunal. This takes cognizance only of urgent business, and the duty is done by the judges in annual rotation.

We shall begin our examination of the tribunals with the superior ones.

CHAMBRE DES PAIRS.

The Chamber of Peers, or rather the *Cour des Pairs*, by the express authority of the constitutional charter, takes cognizance of the following matters :

1. The accusation of ministers for treason or extortion, which crimes remain to be defined by law.
2. Accusations brought against peers in criminal matters.
3. Certain crimes of high treason and outrages against the safety of the state, which also remain to be defined by law.

The chamber for these purposes resolves itself into a court of justice; and although the law which is to regulate its jurisdiction in such cases, in pursuance of the 33d article of the charter, has not yet been enacted, yet there have been already some examples of the exercise of this jurisdiction; as, for instance, in the case of Ney and of Louvel, and in the affair of the military conspiracy in August, 1820. Nevertheless, the jurisdiction of this court still remains uncertain. It appears, however, to be settled by the *cour de cassation*, that high treason and offences against the safety of the state, with the exception of those of which the ministers themselves may have been guilty, fall within the jurisdiction of the ordinary tribunals. But a power exists in the crown to transfer, by an *ordonnance royale l'investissement*, any cause to the Chamber of Peers.

The chamber when sitting as a court of justice preserves the same forms which prevail on the discussion on new laws, with the exception, however, of being at that time public. The court first declares its own competence. No peer may absent himself from the trial without stating his reasons, and receiving the permission of the court; but the accused party has a right of challenge, for cause shown, subject to the approbation of the court.

The pleadings and proceedings are made to conform as nearly as possible to the rules laid down for the *Cours d'Assises* by the *Code d'Instruction Criminelle*. The court assembles to deliberate in the *chambre de conseil*, and pronounces its sentence publicly, in the presence of the accused, or, when it is thought proper, in the presence of his counsel instead. The penalties prescribed by the law can only be inflicted by a majority of five-eighths of the chamber; and where a difference of opinion exists on this subject, the milder punishment prevails; and the opinion of the minority decides definitively the nature and the duration of the punishment. This custom has prevailed, although a majority of members have voted that it did not belong to the court to award any other punishments than those laid down by the law.

COUR DE CASSATION.

The *Cour de Cassation* is divided, like the greater part of the permanent courts or tribunals of France, into several chambers or sections. Its authority extends over the whole territory, and over almost all the civil and criminal tribunals of the kingdom. It sits at Paris, the seat of the government, the centre of the administration and of justice. It is composed of forty-nine members, including the first president and the three other presidents. The other members have the title of councillors. The senior councillor has the title of dean. The first president, after ten years' service, obtains for life the title of baron. This title becomes hereditary, like every other title of nobility, upon the formation of a *majorat*, or provision for an eldest son—an institution not very popular in France.

The salary of the first president of the *Cour de Cassation* is only 36,000 francs (about 1,440*l.* sterling),* that of each of the other presidents 20,000 francs (800*l.*), and that of the councillors 15,000 francs (600*l.*) These salaries, like those of all judicial appointments, are subject to a deduction of two per cent., which, together with the income of the vacant places, and certain fees on the commissions of judges and magistrates, forms the reserve

* That of the minister of justice is 120,000 francs (4,800*l.*); until the last session it was 150,000 francs (6,000*l.*)

fund intended for the pensions and allowances of the judicial establishment.

One-half of the salary of the presidents and members of the court is set apart every month, and distributed to such of them as have been present at the hearings: but it is evident that it depends upon the judges themselves to evade this mode of distribution.

The members of this court, like all judicial functionaries, are intitled, after thirty years of public and effective service, ten of which at least must have been on the judiciary establishment, to a pension equal to half the average salary that they have received during the last three years of their service; this is taken from the reserve fund mentioned above, which is made up by the state when insufficient for its object. This pension increases, as we said, a twentieth for every year of service beyond the thirty: it may be granted before that term. The widows of these magistrates inherit in certain cases the right of their husbands to the pension, and assistance is also sometimes given to their orphans.

The members of this court are nominated by the king, on the recommendation of the minister of justice. All the four presidents must be chosen from the members of the court. No person is qualified to be appointed a councillor until he has completed his thirtieth year, and unless he is a licentiate of law. The members when once nominated are not removable; however, in cases of serious and permanent infirmity, which incapacitates them from discharging the duties of their office, they may be dismissed.

The *Cour de Cassation* is divided into three chambers, two of which are appointed for the trial of civil causes, and the third is devoted to the dispatch of criminal cases.

The first president presides over either of the chambers when he thinks proper. To each of them is attached one of the three presidents, in whose absence the chamber is presided over by its senior councillor, taken in order of nomination. Each chamber has sixteen members, including its president; four members go out of each every year, and are distributed by lot into the two others. This is called the *roulement*, but it is not always carried into execution as required by law.

There must be at least eleven members present to render a chamber competent to act. On some occasions the whole court meets at a general sitting; it is then presided over by the first president, or, in his absence, by the senior of the other presidents, taken as before in the order of nomination; and the presence of thirty-four judges at least is requisite for giving a decision. This more solemn hearing is granted when, after the reversal of the first decision or judgment, the second decision in the same cause, and between the parties, and on the same evidence as the former, is appealed against.

All points are decided in the *Cour de Cassation* by an absolute majority of suffrages. The president delivers his opinion last, and his vote is only counted as one. When the votes are equally divided, in order to bring it to a conclusion, the question is referred to five councillors of the chamber who have not taken a part in the discussion, and their number is made up, if necessary, from the other chambers, taking them in order of seniority. This is, at least, the practice prescribed by the regulations; the law originally was, that in such cases the five councillors should be taken by lot.

The *Cour de Cassation* has the control both of the interpretation of the law and of the limits of the inferior jurisdictions. Thus it takes cognizance of suits for determining the judges, or in conflicts of jurisdiction between the *Cours Royales* and *Cours d'Assises*, the *Tribunaux de Première Instance* and of commerce, justices of the peace, &c., when these tribunals or judges are not under the jurisdiction of the same court. A conflict of jurisdiction occurs when the same cause is carried at the same time before two courts or tribunals, both of which declare themselves competent or incompetent. In either case it is necessary to appeal, in order to determine the jurisdiction. The court also takes cognizance of conflicts of jurisdiction between the ordinary criminal tribunals on one side, and the military, civil, or other tribunals, on the other. The cognizance of conflicts between the judicial authority, properly speaking, and the executive authority, belongs to the council of state.

In serious cases, the *Cour de Cassation* may, at the suit of the parties or of the public officers, authorise the removal of a cause. There may be cases in which either the public safety is concerned in the removal, or where one of the parties has just grounds of suspicion against his judges. The court is the sole arbiter of the justice and validity of the motives which may render it advisable to admit such suits for removal.*

The *Cour de Cassation* decides in all suits confirming or annulling former decrees, brought before it either by the parties or by the public officers.

There are, however, some judicial authorities not subject to the jurisdiction of the *Cour de Cassation*; these are—

1. The chamber of peers when sitting as a court of justice.
2. The justices of the peace when giving a final judgment, except in cases of incompetency, or excess of power.

* There is another ground for removal, caused by the relationship or alliance of one of the parties with two or more of the members of the court or tribunal. But the question of such a removal, which is referred to in article 368 and the following, in the *Code de Procédure Civile*, is argued before the tribunal whose jurisdiction one of the parties declines.

3. Arbitrators, when the arbitration was voluntary.

4. Military councils of war and permanent maritime councils of war, except in cases of incompetency or excess of power alleged by a citizen neither military nor connected with the military by virtue of his office.

5. Maritime councils of war, when trying, without appeal, crimes committed on board ship, or by the guards of the convicts.

6. The maritime tribunals instituted for the trial of crimes or offences committed in ports or arsenals; their decisions being submitted to a special council, which decides whether there shall be any appeal to another maritime tribunal.

7. The special maritime tribunals instituted for the trial of convicts, deciding without redress or revision.

8. The provosts' courts,* giving final judgment, without redress or appeal.

9. Lastly, the decisions given by the *Tribunaux Administratifs*.

The principal causes of appeal are the violation of the forms prescribed by positive laws, and the express infraction of the text of the law. Conflicting judgments, given *en dernier ressort*, between the same parties and on the same evidence, by different tribunals, also confer the right of appeal. Conflicting judgments in civil matters only give a right in the first instance to the *requête civile*, for leave to appeal; but in criminal matters, conflicting judgments or decrees, whether executed or not, give a right to a particular proceeding, which is also brought before the *Cour de Cassation*, but which is called a suit of review. This suit can only be brought in three cases:—1. When a person has been found guilty of a crime, of which another party is afterwards accused and convicted, and the two decisions cannot be reconciled, so that they prove the innocence of one or other of the parties convicted. 2. When, after a conviction for homicide, sufficient evidence is discovered of the existence of the person whose supposed death led to the conviction. 3. When, after the conviction of a person accused, one or more of the witnesses who deposed against him are convicted of perjury. It is, however, only in the second of these three cases that a review can take place after the execution of the sentence, and in such cases a person is appointed to protect the memory of the person formerly condemned, with whom the cause proceeds.

The *Cour de Cassation* cannot, under any pretext or in any case, decide upon the substantive question at issue between the parties.

* An exception which is only founded in barbarity and inhumanity, and which does not even leave the unfortunate wretches who are condemned the resource of an application for mercy, as the sentence is carried into execution in twenty-four hours.

and the papers in support of it. The declaration made to the clerk may be followed up, after a delay of ten days, by the party himself, by the direct transmission of a requisition to the *Cour de Cassation*. Appeals in criminal matters are exempt from the preliminary formality of admission, and are tried directly, immediately, and exclusively, by the chamber appointed for criminal business, which takes the name of *Chambre Criminelle*. All other suits addressed to this court must be commenced by a requisition, signed by an advocate, and are first heard before the *Chambre des Requetes*.

In all criminal causes, whether of a more serious nature or merely police cases, the appeal to this court suspends the execution of the sentence; but the party condemned to a punishment, bringing with it privation of liberty, is not admitted to appeal unless he is in confinement, or has been released upon security. This regulation renders the right of appeal in some cases a mere delusion.

In civil matters, on the contrary, an appeal to the *Cour de Cassation* does not stop execution, that is to say, a decree *en dernier ressort*, although appealed against, is enforced without interruption. The court itself cannot in any case stop the execution.

The appellant in a civil cause, where his appeal is rejected in the *Chambre des Requetes*, is fined 150 francs at the lowest, if the judgment questioned was after hearing him, and 75 francs if the judgment had been given through his default. The fine is doubled if he fail after his appeal is received, although the contrary regulation would appear more equitable. There are no exceptions to this, except suits for the reversal of decrees of competency. If the appeal is instituted to reverse an adverse decision, the fine and its amount over the sums before mentioned are discretionary on the part of the court, who may also condemn the plaintiff in damages. In criminal matters generally, the party failing is also liable to the following fines:—The party complaining of having been injured to 150 or 75 francs, and an indemnity of 150 francs to the party accused; the condemned party to 150 francs, except in cases of persons condemned for the higher criminal offences, that is, for offences punished with corporal or infamizing penalties. The plaintiff, in a suit for determining the judge in civil matters, when he fails to prove his case, can only be condemned to pay damages to the adverse party; in criminal matters, he is fined to an amount not exceeding 300 francs (12*l.*), one-half of which goes to the adverse party, except when he is the public officer. Lastly, the plaintiff in a personal matter, whether civil or criminal, if he loses his suit incurs a fine of 300 francs, and is liable to be made to pay damages to the other party.

The object of these regulations is to prevent the bad use which parties might make of these remedies, either from a spirit of litiga-

tion or from a culpable mistrust of justice. For this reason, parties appealing to this court, who are condemned to heavy punishments, are exempt from the fines. The public officers and the agents of the administration, acting in their public capacity, are also exempted, and their expences and the indemnity to the other party are paid by the state.

In civil matters every appellant, except for conflicting decisions or incompetency, is bound, under penalty of rejection or nonsuit, to deposit in advance, in the hands of the receiver of the fines, the sum of 150 francs, if in cases of adverse judgments; or 75 francs, if in cases of judgments given by default. In criminal matters the same deposit is required, except from persons exempted from paying the fine. However, if parties are proved to be indigent, the deposit is dispensed with, but not the payment of the fine; they, like all others, are bound to be in the right.

COURS D'ASSISES AND COURS ROYALES.

Cours d'Assises.

The members of the *Cours Royales* have precedence over those of the *Cours d'Assises*, but the judicial functions of the latter, at least in criminal matters, are of higher importance.

The *Cours d'Assises* take cognizance of all offences which subject the offender to corporal or infamous punishments; such as death, compulsory labour, civil disabilities, and the like. They are temporary local tribunals, which sit from time to time in each department. Their sessions are held usually in the capital of the department, but the *Cour Royale*, within whose jurisdiction the department is situated, may, by a decree passed at a general meeting, appoint for that purpose any other place and time of session, provided it be the seat of a tribunal *de première instance*, or *d'arrondissement*. These assizes are held every three months, or oftener, if necessary. In Paris two sessions are usually held each month, and as these are generally divided into two sections, there may be said to be twelve assizes in the three months. The first president of the *Cour Royale* fixes the day on which the assizes are to be opened, if held in the ordinary place. The assizes are not closed until all criminal cases then ready are heard; but as at Paris these usually occupy eight or ten days, they succeed one another almost without interruption. No person committed to the prison belonging to each *Cours d'Assises* after the opening of the assizes can be tried that session, unless by the concurrent consent of himself, the *procureur-général*, and the president of the assizes. In this case the *procureur-général* and the prisoner are considered to have renounced their right of appealing to the *Cour de Cassation* against the decree which ordered the trial of the party

at that assize. This measure cures any defects which might otherwise vitiate that decree, or the previous proceedings.

In those departments which are the seat of a *Cour Royale*, the assizes are held by five members of that court, one of whom receives the title of president of the assizes. In the other departments, the *Cour d'Assises* is composed of a member of the *Cour Royale*, who is delegated for that purpose, and acts as president; and four judges, who are taken from the members of the *tribunal de première instance* of the place where the assizes are held. The *Cour Royale* may, however, delegate one or more of its members to assist the president, and then the members of the other tribunal are only taken to complete the number of four.

The presidents and members of the *Cour d'Assises* are nominated by the minister of justice, and, if he neglects it, by the first president of the *Cour Royale*. The first president of each *Cour Royale* may, when he thinks fit, preside at the assizes of each department within the jurisdiction of that court.

The *Cours d'Assises* have only the power of determining the amount of punishment to be inflicted, or of damages to be awarded, after the decision of a jury, who decide as to the liabilities of the parties in these respects: juries, varying much from their original institution in France, are now confined to decision at the trial; they are each composed of twelve members. The persons qualified to serve on juries in France are—

1. All persons answering to the conditions required for voting as electors of the members of the chamber of deputies, which are, thirty years of age, and the payment during the previous year of 300 francs direct contributions, whether on land or moveables, poll-tax, for doors and windows, or patents.

2. Public functionaries of thirty years of age, nominated by the king, and discharging gratuitous offices.

3. Retired officers of the army or navy, being actually domiciled in the department for five years, and in the receipt of a pension of at least 1,200 francs: this will not include any officers lower than a captain in either service.

4. Doctors and licentiates of any of the faculties of law or letters, inscribed in the lists of the advocates or attornies of the courts or tribunals, or employed in any situation of public instruction, or at least domiciled for ten years in the department; doctors of medicine, the corresponding members of the Institute, the members of other learned societies recognized by the king; and, lastly, notaries after three years' practice: but all must be at least thirty years of age, and in the enjoyment of all their civic rights.

In the departments where the persons so qualified do not amount to 800, that number is completed by the choice of the most respectable individuals, who unite the qualifications of age and the

possession of all their rights. The list of all these persons is posted up annually, not only in the capital of the department, but in every commune; and submitted to the verification and control of the administrative authorities and citizens. After these general lists have been rectified, if necessary, and confirmed, each prefect selects from the general list of his department, for the service of the jury of the following year, a quarter of the names composing it, not exceeding the number of 300, except in the department of the Seine, where the number selected is 1,500; these selections are then transmitted to the minister of justice and to the first president, and *procureurs-généraux* of the *Cours Royales*. Ten days at least before the opening of the assizes, the first president of the *Cour Royale*, at a public sitting, takes by lot from this list thirty-six names, from among whom are to be drawn at the *Cour d'Assises*, for each cause, the twelve persons to compose the jury for trying it; besides these thirty-six, four more names are drawn as supplemental jurymen. If any of these forty persons do not answer when called upon, they are fined by the *Cour d'Assises*, 500 francs for the first time, 1,000 francs for the second, and 1,500 francs for the third. Their names are the first and second times put back into the urn, but the third time they are declared incapable for the future of serving on juries. Except in these cases, or in that of temporary excuses which have been allowed, or of extraordinary assizes, no person is placed two years following, or more than once in the same year, on the list selected by the *préfet*. In the case of extraordinary assizes, no person is placed in the list more than twice in the same year.

The list of thirty-six jurymen must be notified to each person accused the day before his trial; but it is not requisite that more than thirty of them should be present for the court to proceed to drawing the jury that is to try the cause. If more than six are wanting when called over, the number of thirty is made up, in the first place, by the four supernumerary jurymen mentioned above, and, if that is insufficient, by drawing by lot from the selected list of the *préfet*, or even from the general list of jurymen, such persons as dwell in the town where the assizes are held. The having served once in this last-mentioned way, does not exempt a person from being called upon to serve any number of times again in the same way in the course of the year.

It is at the time of drawing the jury for the trial that the public officer and the party accused exercise their right of challenging. As each name is taken out of the urn, the prisoner first, and after him the *procureur-général*, object to such of the jurymen as they think proper; they have a right of challenging an equal number of times, and are not obliged to give their reasons

If there is an uneven number of names in the urn, the prisoner may challenge one more than the *procureur-général*. The jury is considered to be formed for the trial as soon as twelve names are drawn and not objected to, and the right of challenge ceases when there are only twelve names left. If there are several parties to be tried, they may either challenge jointly or separately, and they may agree to do it jointly in part, reserving to themselves the right of challenging the remainder separately. They cannot, however, in any case challenge a greater number than is allowed to one prisoner alone. When they use their right separately, those jurymen who are rejected by one of the parties are considered to be so by all; the order in which they are to exercise their right of challenging is fixed by lot.

The *Cours d'Assises*, thus constituted, take cognizance of all crimes, that is to say, of all such infractions of the law as are punishable with corporal or infamizing penalties, excepting, however, those criminal acts the cognizance of which is reserved for particular courts, such as the Chamber of Peers, and the like. All persons are liable to this jurisdiction except members of the *Cours Royales*, and also members of a tribunal of *première instance* or of *commerce*, where all the members of that tribunal are included in one common accusation; but even in this case they may be made liable to the jurisdiction by the direction of a chamber of the *Cour de Cassation*.

In 1819 the *Cours d'Assises* were invested with the cognizance even of offences of the press; but by a law of the 25th of May, 1822, authors were deprived of the security of a trial by jury. However, by the law of 8th October, 1830, the cognizance both of offences of the press and of political offences was re-vested in a jury.* An act of 1824 transferred from the *Cours d'Assises* to the tribunals of *police correctionnelle*, the trial of all persons under sixteen years of age who are accused of crimes which, on account of their youth, are punishable only by imprisonment, and who had no accomplices of maturer age; provided, however, that the offence be not such as in an older person would be punished with death, hard labour for life, or transportation.†

In our next number we shall give an account of the *Cours Royales*, and the other courts we have not yet mentioned.

* *Vide ante*, p. 52.

† The mode of proceeding in these courts is laid down at considerable length in the articles 309 to 380 of the *Codé d'Instruction Criminelle*.

ART V.—THE BARRISTER.*—No. 3.

SECTION III.

HIS DUTY TO THE COURT.

1. *He is ever mindful of the respect due to the court.*—Whether it is the highest or lowest tribunal in the country, the House of Lords, or the Court of Pie Poudre, it is the place where justice is administered, and is a hallowed place.

“When baseness is exalted, do not bate
The place its honour, for the person's sake.
The shrine is that which thou dost venerate;
And not the beast, that bears it on his back.
I care not though the cloth of state should be
Not of rich arras, but mean tapestry.” *Herbert.*

2. *If insulted he is more sensible of the injury to good feeling than to himself.*—He is not so ignorant of human nature as not to expect haughtiness from the proud, contempt from the rich, ill manners from the vulgar, foolish talking and impertinence from the ignorant and conceited;—he does not expect to gather figs of thorns.

When Dr. Franklin came to England to implore the attention of our government to the representations made by America, he was ordered to attend at the privy council, where he was grossly insulted by Mr. Wedderburn; at the sallies of whose wit all the members of the council, except Lord North, were in fits of laughter. A day or two after he said to Mr. Lee, one of his counsel, “that to Mr. Wedderburn's conduct he was indifferent, but he was indeed sincerely sorry to see the lords of the privy council behave so indecently.”

3. *If insulted by an equal, he does not forget the respect due to the court, but suppresses his feelings until he has retired.*—Shallow streams are agitated by the wind, deep streams flow on. He knows that this tranquillity may have the appearance of timidity, but he heeds it not. Alas, what is the appearance of any thing? Quos ego—sed motos præstat componere fluctus, is his feeling.

When the ecclesiastic insulted Don Quixote before the duke, the knight rose in indignation, but instantly said, “The place where I am, and the presence of the persons before whom I now stand, and the respect which I always have had and always shall have for men of your profession, tie up the hands of my just indignation.”

* Continued from page 94, and concluded.

4. *If a judge forget himself, and the infirmities of human nature appear through the ermine*, he laments that the charity of patience and the conduct of a gentleman should be found only in the advocate. He says with Sir Edward Coke, "If a river swelleth beyond the banks, it soon loseth its own channel; but, if another punish me by doing what is wrong, I will not punish myself."

5. *If he forget himself and yield to anger, he does not suffer it to rankle in his mind*.—He remembers the anger of Hooker, which is said to have been like a phial of clear water, that, when shaken, beads at the top, but instantly subsides without soil or sediment of unkindness.

6. *He does not interfere after the judge has decided*.—He knows that perfection in the administration of justice consists in causes being fully heard, deeply considered, and speedily decided. When the cause has been fully heard, the advocate's duty is terminated. "Let not the counsel at the bar," says Lord Bacon, "chop with the judge, nor wind himself into the handling of the cause anew after the judge hath declared his sentence."

SECTION IV.

HIS DUTIES TO HIS PROFESSION.

1. *Having shared the fruits, he endeavours to strengthen the root and foundation of the science of law*.—"I hold," says Lord Bacon, "that every man is a debtor to his profession, from the which, as men do of course seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and ornament thereunto." And Sir Edward Coke, differing as he did from Lord Bacon upon all subjects, except the advancement of their noble profession, expresses the same sentiment, almost in the same words. "If this," he says, "or any other of my works, may in any sort, by the goodness of Almighty God, who hath enabled me hereunto, tend to some discharge of that great obligation of duty wherein I am bound to my profession, I shall reap some fruits from the tree of life, and I shall receive sufficient compensation for all my labours."

2. *He resists injudicious attempts to alter the law*.—Knowing that zeal is more frequent than wisdom, that the meanest trade is not attempted without an apprenticeship, but every man thinks himself qualified by intuition for the hardest of all trades, that of government, he is ever ready to resist crude proposals for amendment: his maxim is, "to innovate is not to reform."

Lord Bacon, zealous as he was for all improvement; believing,

as he did, in the omnipotence of knowledge, that "the spirit of man is as the lamp of God, wherewith he searcheth the inwardness of all secrets;" and branding the idolaters of old times as a scandal to the new, says, "It is good not to try experiments in states, except the necessity be urgent, or the utility evident;" and well to beware that it be the reformation that draweth on the change, and not desire of change that pretendeth the reformation: that novelty, though it be not rejected, yet be always suspected: and, as the Scripture saith, 'that we make a stand upon the ancient way, and then look about us, and discover what is the straight and right way, and so to walk in it.'

3. *He does not resist improvement of the law.*—Tenacity in retaining opinion, common to us all, is one of Lord Bacon's "Idols of the Tribe," and attachment by professional men to professional knowledge is an "Idol of the Den" common to all professions. "I hate the steam-boat," said an old Greenwich pensioner; "it's contrary to nature." Our advocate, therefore, is on his guard against this idolatry. He remembers that the lawyers, and particularly St. Paul, were the most violent opposers of Christianity, and that the civilians, upon being taunted by the common lawyers with the cruelty of the rack, answered, "Non ex sævitâ, sed ex bonitate talia faciunt homines."

Nor does he forget the lawyer in the Utopia, who, when the Archbishop of Canterbury, venerable in his age and learning, said, "Upon these reasons it is that I think putting thieves to death is not lawful," the counsellor answered, "That it could never take place in England without endangering the whole nation." As he said this, he shook his head, made some grimaces, and held his peace.

4. *He is aware that lawyers are not the best improvers of law.*—During a debate in the House of Lords, June 13, 1827, Lord Tenterden is reported to have said, "That it was fortunate that the subject (the amendment of the laws) had been taken up by a gentleman of an enlarged mind (Mr. Peel), who had not been bred to the law; for those who were, were rendered dull, by habit, to many of its defects."

And Lord Bacon says, "Qui de legibus scripserunt, omnes vel tanquam philosophi, vel tanquam jurisconsulti, argumentum illud tractaverunt. Atque philosophi proponunt multa dictu pulcra, sed ab usu remota. Jurisconsulti autem, suæ quisque patriæ legum (vel etiam Romanarum, aut Pontificiarum) placitis obnoxii et addicti, judicio sincero non utuntur, sed tanquam e vinculis sermocinantur. Certè cognitio ista ad viros civiles propriè spectat; qui optimè nôrunt quid ferat societas humana, quid salus populi, quid æquitas naturalis, quid gentium, mores, quid rerumpublicarum formæ diversæ; ideòque possint de legibus

ex principiis et præceptis, tam æquitatis naturalis quam politices, decernere."

5. *He resists erroneous modes of altering bad law.*—Lawyers have a tendency, instead of inquiring whether the principle of a law is right, to alter upon the assumption that the principle is well founded. In 1809 Sir Samuel Romilly proposed to alter the law in bankruptcy, by which a creditor has an arbitrary power to withhold his consent to the allowance of the certificate, because it was founded on an erroneous principle. The bill passed the Commons, but was rejected in the Lords, upon a proposal by Lord Eldon, (who was then chancellor,) that the requisite number and value of signatures should be reduced from four-fifths to three-fifths.

About the same time, Sir Samuel proposed that the law, by which the stealing to the amount of 5s. privately, in a shop, was punishable by death, should be altered; because it was framed upon an erroneous principle, as crime was not prevented by this imaginary calculation of consequences in the mind of the offender. It was suggested that the punishment ought not to be diminished, but the amount of the goods stolen increased.

In various of the acts for the relief of insolvent debtors, which passed to mitigate the severe operation of arbitrary imprisonment for debt, the reason assigned in the preamble was, that *the gaol was too full*: viz. 6 Geo. III. c. 70. "Whereas, notwithstanding the great prejudice and detriment which occasional acts of insolvency may produce to trade and credit, it may be expedient, in the present condition of the prisons and gaols in this kingdom, that some of the prisoners who are now confined should be set at liberty; be it, &c."

In May, 1827, it was proposed to Parliament to alter the law for arrest on mesne process to the sum of 20*l*. Our advocate, therefore, resists such attempts, which, instead of meeting, perpetuate the evil, which

" Keeps the word of promise to our ear,
And breaks it to our hope."

6. *He assists in the improvement of the law.*—While he dwells in doubt, and is in a straight between the ancient error and infant truth, he endeavours to improve himself; but after patient and successful travail after truth, he diffuses the knowledge which he has obtained. Having in the beginning consulted Argus with his hundred eyes, he now trusts to Briareus with his hundred hands.

7. *He is not deterred from assisting in the improvement of the law by the fear of worldly injury.*—Neither in general conduct nor in particular emergencies, are his plans subservient to considerations of rewards, estate, or title: these are not to have prece-

dence in his thoughts, to govern his actions, but to follow in the train of his duty. He says, with Sir Samuel Romilly, "It is a common, and may be a convenient mode of proceeding, to prevent the progress of improvement, by endeavouring to excite the odium with which all attempts to reform are attended. Upon such expedients it is scarcely necessary for me to say, that I have calculated. If I had consulted only my own immediate interests, my time might have been more profitably employed in the profession in which I am engaged. If I had listened to the dictates of prudence, if I had been alarmed by such prejudices, I could easily have discovered that the hope to amend law is not the disposition most favourable for preferment. I am not unacquainted with the best road to attorney-generalships and chancellorships: but in that path which my sense of duty dictates to be right, I shall proceed; and from this, no misunderstanding, no misrepresentation, shall deter me."

8. *He is not deterred from endeavouring to improve the law by the censure ever attendant upon attempts to reform.*—He knows that the multitude will cry out for Barabbas, and that ignorance has an antipathy to intellect.

"'Tis a rich man's pride there having ever been
More than a feud, a strange antipathy
Between us and true gentry."

He knows this, but proceeds, secure of his own approbation, and the sympathy of the virtuous and intelligent.

9. *If the principle of the law is erroneous, he endeavours to extirpate it with its attendant injustice and litigation.*—If the principles of the laws against usury or witchcraft, or widows burning themselves, are erroneous, he endeavours to procure their repeal.

In these cases he remembers the maxim of Sir Edward Coke: "Si quid moves à principio moveas; errores ad principia referre est refellere." He remembers the old maxim: "He who in the cure of politic or of natural disorders shall rest himself contented with second causes, without setting forth in diligent travel to search for the original source of evil, doth resemble the slothful husbandman, who moweth down the heads of noisome weeds, when he should carefully pull up the roots; and the work shall ever be to do again."

10. *If the principle is right, he endeavours to modify it, according to times and circumstances.*—If the principle of the laws against usury is well founded, he varies the rate of interest; or in witchcraft he mitigates the severity of the punishment.

In these cases he remembers the admonition of Sir Matthew Hale: "We must do herein, as a wise builder doth with an house

that hath some inconveniences, or is under some decays. Possibly here or there a door or a window may be altered, or a partition made; but, as long as the foundations or principles of the house be sound, they must not be tampered with. The inconveniences in the law are of such a nature, as may be easily remedied without unsettling the frame itself; and such amendments, though they seem small and inconsiderable, will render the whole fabric much more safe and useful."

11. *If there is any temporary cause to lower the character of the profession, he exposes it.*

12. *If there is any permanent cause to lower the character of the profession, he endeavours to counteract it.*—As the advancement of learning has a tendency to divert from action and business to leisure and privateness, the pleasures of intellect being preferable to the pleasures of wealth and ambition, he endeavours to inculcate the true doctrine, that men, instead of deserting their colours, ought to unite contemplation and action, "a conjunction like unto that of the two highest planets—Saturn, the planet of rest and contemplation, and Jupiter, the planet of civil society and action."

13. *If he is advanced to any office of authority, he uses his power to improve the law.*—Sir Francis Bacon was no sooner appointed attorney-general than he dedicated to the king his proposals for compiling and amending the laws of England, "Your majesty," he says, "of your favour, having made me privy-councillor, and continuing me in the place of your attorney-general, I take it to be my duty, not only to speed your commandments and the business of my place, but to meditate and to excogitate of myself, wherein I may best, by my travels, derive your virtues to the good of your people, and return their thanks and increase of love to you again. And after I had thought of many things, I could find, in my judgment, none more proper for your majesty as a master, nor for me as a workman, than the reducing and recompiling of the laws of England."

And having traced the exertions of different legislators from Moses to Augustus, he says, "Cæsar, si ab eo quæreretur, quid egisset in togâ; leges se respondisset multas et præclaras tulisse;" and his nephew Augustus did tread the same steps, but with deeper print, because of his long reign in peace; whereof one of the poets of his time saith,

"Pace data terris, animum ad civilia vertit
Jura suum; legesque tulit justissimus auctor."

So too, Sir Samuel Romilly was no sooner promoted to the office of solicitor-general, than he submitted to parliament his proposals for the improvement of the bankrupt law and the criminal

law. "Long," he says, "has Europe been a scene of carnage and desolation. A brighter prospect has now opened before us.

— "Peace hath her victories,
Not less renowned than war."

14. *He now retires*, but not unmindful of the precept, "Let no man be hasty to eat of the fruits of Paradise before his time." He retires, after a life of labour and industry, to enjoy his well-earned leisure;

"To taste of deep philosophy,
Wit, eloquence, and poesy;"

to the innocent pleasures of social mirth, to the nobler warmth of social virtue, to the advancement of merit, the promotion of justice, and the constant exercise of faith, hope, and charity.

ART. VI.—PAROCHIAL REGISTRATION AND MUNICIPAL INSTITUTIONS.

In one of our early numbers* we entered into some account of the manifold defects and anomalies of our scheme of parochial registration. We showed that, as regards *births*, it, strictly speaking, gives no evidence whatever. All that appears is the *baptism*; from which certainly it may reasonably be inferred that the subject of the ceremony had previously commenced his existence, but how long before no one can tell. Even this defective record is totally wanting with respect to all unbaptized persons, including all nonconformists; and the *form* of the register was, besides, observed to be exceedingly defective in supplying what is requisite in connecting a pedigree.

As to *marriages*, the register, we remarked, is here more complete, because the legislature has taken the affair into its own hands, and (without regard to religious opinions, or the principles of toleration, in other respects recognised by law) persons of all religious denominations, except the Jews and Quakers, are compelled, for reasons of civil convenience, to resort to the church in this instance, and to partake of its rites. That this cannot last long is manifest, and then will at once arise the same difficulties as interpose to render the birth-record so imperfect.

As to *deaths*, the record is probably more comprehensive, from the connexion of the greater number of burial-grounds with the established church. But still the return must be far from perfect,

and a similar observation occurs here as in the case of births—that the fact recorded is interment, which certainly *follows* the death, but leaves the exact period of the latter event uncertain.

The accuracy of population and statistic returns and calculations drawn from the present sources, we observed to be quite out of the question. It is, indeed, amusing to see people gravely speculating on such materials. We then adverted to the practical difficulties attending any scheme of reforming or remodelling the existing system. It is at present connected with the Established Church, and is the means of providing considerable emolument to its ministers. They are very sensitive, therefore, as to the project of removing any part of the business from their cognizance; while, at the same time, many of them are equally impracticable, on the subject of making them discharge this (which is purely a civil duty) in such a way as to answer its object, and avoid interfering with the religious scruples of the people. In short, we expressed our conviction that no good system could be framed without taking the whole affair out of the hands of the clergy, and establishing a civil registration of the *facts* of birth, marriage, and death.

Our attention has again been directed to the subject by a bill introduced this session into parliament by Lord Nugent, and still pending, entitled, “A Bill for Registration of Births.” This bill (we speak of it in its original form, we have not seen it since the commitment, where it may have been altered) leaves, as its title denotes, all the rest of the system in its plenitude of imperfection, and professes to mend the matter by separating the deposit of the evidence of births from the other branches of registry with which it has been hitherto associated. We are still to look for marriages and deaths with the ordinary; but the births are to be the peculiar care of clerks of the peace, and of *the registrars of the Court of Chancery!* What notion his lordship in his imagination had formed of this latter officer’s functions and opportunities for forming a convenient record, it is difficult for us, who are not part of “the collected wisdom,” to divine. We earnestly invite his lordship to direct some morning’s perambulation to the abode of the Chancery functionary whom he thus selects, and we shall content ourselves meantime with suggesting that as any one *registrar* will probably do as well as another, there are some ten gentlemen rejoicing in that name, with a learned serjeant at their head, reposing in the New Court of Bankruptcy in Basinghall-street; for some of whom it will be great charity to find employment, while their namesakes in Chancery are so well provided with work, as to stand much more in need of additional force than of extra labours.

It will be observed, that though the preamble of the bill purports “to provide means for the general registration of births,”

there is not the least probability that its provisions will be applied to any other than the cases of those who do not find admission into the usual church register through the administration of baptism. The fact seems to be, that, instead of a "*general* registration of births," the real object of the noble mover is only to provide an official register of the births of the children of Dissenters. The baptismal register is left with all its defects, and will have to be searched as before. We can see no reason why, when a mere patching of the old system, to meet a particular deficiency, is thus attempted, it should have been thought expedient to abandon the direct transmission of the birth register with the other church books to the *ordinary*, who, whatever be his defects, is at least as good as the registrar of the Court of Chancery. Certainly it requires strong ground to justify a distribution of such matters into different channels, thereby greatly increasing both trouble and expence, and the chances of irregularity.

We should be sorry to discourage any praiseworthy attempt on the part of a nobleman like Lord Nugent, to reform the legal institutions of his country; but really the present bill is a curious sample of the mode in which legislation is carried on in this country, and of the way in which the time of parliament is occupied in projects for patching up portions of systems altogether bad,—projects which, if they succeed, must be wholly ineffectual to any good purpose, from the want of system, and from the defective character of the machinery; and if they fail, do mischief, by preventing attention meantime from other quarters to what may be really an important subject.

The bill supplies no compulsory provisions for forming a complete record of the births of the whole population; or of any class of it; neither does it collect all the proper materials for making one. It only requires the parish clerk to keep a book, and to make entries therein, for those who choose to go before him, in a prescribed form, which (for moral reasons no doubt) provides for none but *legitimate* children, and which is a very clumsy one, and not in a tabular shape, the only convenient way of managing such matters. The entry purports to be the record of the deposition of a party present at the birth, and so far supplies what the present registry does not afford. But it wants one thing, for which the foreign regulations take particular care to provide, and which the baptismal ceremony gives the means of now establishing, namely, that the parish clerk (a very indifferent species of recording officer, by-the-bye) is not required to see the child, and of course, therefore, will not (except by hearsay) know that the very subject-matter of the record is even in actual existence.

The bill then provides that a duplicate entry shall be made,

not in a book, but "*upon the first vacant place in a detached or separate paper.*"

The two records, that is to say, the book and the bundle of "detached papers," are, before every quarter sessions, to be brought by the clerk to a justice of the peace; and the *clerk* is in his presence to compare the two, and sign a declaration as to the correctness of the entries, and the justice is to receive the declaration, and certify the examination and verification. Forms are added for this declaration and certificate. The clerk's form, however, we observe, merely declares the correctness, and does not bear testimony to the examination, though he is the party directed to make it; while the form of certificate of the justice, who is *not* required to examine, makes known that *he* himself has personally examined the entries.

The "*detached papers*" are to be delivered by the clerk (no provision being made for the justice's annexing, numbering, or otherwise identifying them) to the chief constable; who is to deliver them to the clerk of the peace; without any security being provided that the "*detached papers*" so delivered to the constable, and by him to the clerk of the peace, are the same, and *all* of the same, as the clerk had verified before the justice, and thence conveyed to the constable. The clerk of the peace is then to *transcribe* all these entries (each being of considerable length) into a book, arranged in alphabetical order, and numbered; and he is also to make indexes both of names and parishes, so that in every year there would be four indexes to search. He is then to keep the original "*detached papers*," and also the transcribed book and indexes so formed; and he is furthermore to send a copy of every such "*table*" (?) and index to the *registrar of the Court of Chancery*, by whom they are to be collected into volumes for each county. The clerk of the peace is to be paid by the county treasurer; all others are to work gratis. What the registrar of the Court of Chancery is to do with his *collections*, is not said. We gather that all these books, detached papers, transcripts, indexes, tables, and collections, are to be legal evidence not only of the birth, but of the relationships mentioned in the entries. The provision for searching copies and certificates from the clerks of the peace's transcripts, leads us to conclude the noble legislator's idea to be, that certified extracts from this transcript of the original document are to be preferred for the purpose of proof; that proof being thus, after all, nothing but a certified copy of a copy of the declaration of a witness to a parish clerk, of the fact of his presence at the birth of a child, whose *name* he gets we are not told how, with several collateral or inferential declarations as to relationships, which the form of entry assigns no reason for his knowing any thing at all about, except as matter of hearsay.

Dismissing this specimen of our law-making system, we have a few observations to offer on the topics suggested in considering the means by which parochial registration in general (for it is idle meddling with *part*) can be rendered consistent with our advanced state of civilization, more comprehensive in extent, more easy of reference, and better adapted to the practical purposes of proof. Even without a thorough revision of the system, the *forms*, at least, might in *any* one's hands be made better; and if the clergy are to continue the keepers of these records, they must consent to retain the office on the terms of performing it as a real duty for the whole population; and the returns at least must be made to a central civil office, where there should be persons whose duty it should be to enforce regular and correct returns from the clergy.

But we have long ago declared our opinion, that an effectual record for legal, political, and statistic purposes, can be looked for only in the establishment of civil officers in every district, by whom the business of registration should be performed nearly in the manner in which it is transacted in France; and the consideration of this subject leads us naturally to observe how useful the creation of a civil officer in each district might be made in connexion with almost every branch of public official and legal business; and how singularly deficient the institutions of this country are, as regards the existence of any officer and place of public business capable of being applied to purposes of this sort, as well as for the discharge of many functions now distributed at random through all sorts of irregular channels.

Our internal police (if so it can be called) is without plan or connexion; the same in the present complicated state of society as it existed centuries ago. We have no connected chain of officers applicable to matters of public policy or legal authentication, as occasion arises, in connexion with, and subordination to, the heads of the civil power, and capable of being referred to, as resident functionaries of credit, in all courts, for the notification of facts, which, in such case, might be received on the faith of such notification.

We have *notaries*, it is true; but in this country they are of little or no practical utility; and, in fact, they are not recognized in our courts, except for a few commercial purposes.

There is the same deficiency of provision for the deposit and preservation of public documents. We have no permanent office, or place of record, for those local documents which are perpetually accumulating, and which are of importance to the properties and legal interests of the inhabitants of every neighbourhood. Our magistrates, commissioners of taxes, coroners, &c. &c., meet at their own houses or at taverns, and the minutes of their proceedings are as transitory as their functions. The parish chest

(a clumsy receptacle for all sorts of matter, often kept in a damp church, where nothing will endure but for a very brief space of time), is made the depository of *one* thing; the clerk of the peace's office is the place for another; the ordinary's court for another; the coroner's place of business follows his personal residence; the high constable's, in general, does the same; and many documents are left with officers who come and go, and have no offices at all. For one purpose a churchwarden's certificate or voucher is required, for another the overseer's is selected; for another purpose the minister, for another the constable, is the authority; and the courts of law, without special provision, give credence to the voucher of none of them. We cannot open the statute book without observing, that the contrivances resorted to for public purposes amply show the want of permanent district functionaries.

For purposes of public *notice* we are equally at fault. Divine service is broken in upon for the minister, or his clerk, to read parish, military, or fiscal notices. The church doors are encumbered with placards; and, after all, a great proportion of the population do not go to the church at all, so that, as to them, there is no notice whatever. The church and the vestry, too, are continually (for want of more proper places for business) devoted to purposes little consonant to such buildings, and embarrassing to all parties concerned in their use.

It surely is high time that we had, as almost every country in Europe has, some officer (whether by a new name, or by the enlargement of the functions of some old constitutional authority); who should have a permanent establishment in all conveniently sized districts (the arrangement of which could easily be formed); to whose acts and certificates, under an official seal, for defined purposes faith should be given in *all courts*; who should have all notarial functions,—adapted of course to many more purposes than at present;—and at whose office all municipal business should be *transacted*, and its documents *deposited*. Each such district officer should communicate directly with a county central officer, and in many matters with a metropolitan depot, under the supervision of the home department.

Without the regular establishment of some such accredited organs, for the purpose of internal police, and for the transaction and record of the *civil*, and a good deal of the *legal* business of the country, it will be very difficult to effect many highly necessary measures of legal and municipal reform; and, on the other hand, if a well connected chain of authorities were once established, reforms might be effected in almost all departments of business of incalculable importance in every point of view, but especially in the saving of *expence*.

We will hastily notice a few of the matters which would properly come within the scope of such an officer; and we may here observe that moderate fees would (especially in populous districts) amply remunerate a respectable man, and his necessary assistants, for performing the duties which might be assigned to him. He should have received a competent legal education, and be elected by the householders of the district, subject to effectual control somewhere, as to the fitness of the party chosen, and as to his conduct in office.

First, in connection with Police.

1. Such an officer would have the registration of actual *births*, *deaths*, and *marriages*. *As to births*.—To make a registry complete, it should be compulsory in all cases of birth that the parent, or some witness or witnesses present, should make and depose to a declaration of the fact, in a form containing all the proper circumstances. It might be a matter for consideration, whether this declaration should be a separate document (from which the entry in the book should be made), or whether the entry itself should be the original declaration to be signed. It has been suggested that the baptismal entry at the church (taking care to add to it the time of actual *birth*, on the deposition of a parent or witness present), would be sufficient materials for the civil officer to frame his list from, as to persons actually baptized; that he would only want, in addition, declarations as to children *not* baptized; and that the regulation, therefore, need only be, that every child, *unless* entered as baptized at church, should be entered *on declaration* with the civil officer within a limited time after birth.

This is certainly *one* way; and if both documents (the *church register* and the *civil one*, compiled as thus suggested), were each made legal evidence, the importance and character of the church register would still continue. But such a plan would obviously be an unskilful contrivance, and would exalt what would be in part a mere copy into an official and original document.

The mother's maiden name should be mentioned in all birth registers, and the time and place of her marriage.

As to deaths.—Registration might (as in France) be made necessary to be certified previously to burial, and the entries might be made on *declarations* delivered in a suitable form. The present institution of "*searchers*" would easily combine with regulations of this sort, so that each would become more effectual. These declarations and certificates again might (for the same reasons as above mentioned) be required only for burials had elsewhere than at the parish church; for as to the deaths of those buried at the latter place, the church register might be considered com-

petent to furnish the necessary materials for the civil register. The *form*, however, should be improved, and, in particular, the time of *death* should be stated, and the names of the parents of the deceased should be supplied where they can.

As to marriage.—The simplest plan would be to make the attendance of the registering officer, or a deputy, necessary at every marriage. But this, if desired, might be dispensed with as to all marriages celebrated in church; the church marriages being entered by the civil officer in his book, by reference to the register, which would continue to be kept by the minister. The *form*, in this instance, also requires to be altered; tabular forms are in all cases best, and most convenient for reference.

2. Notice of every marriage not had by licence should be given at the civil office, as well as the notice by *banns* at church, or perhaps optionally at either. In case, however, of the marriage of nonconformists (unless had by licence), the notice should be always through the civil officer, whose certificate of the fact, or attendance in person or by deputy, in order to make and attest the record, should be essential to the legal celebration of such marriages. This regulation would comprehend Jews, Quakers,* Catholics, and any other dissidents who may hereafter be exempted from the strict operation of the Marriage Act.

3. For obvious reasons of convenience and regularity, the registering officers should be *surrogates* of the bishop, for the granting of marriage licences, to the exclusion of all other persons.

4. All the operations attendant on a *census* would be naturally transacted at the same office, and the documents so arising would be there preserved.

5. The *jury lists* should be formed there.

6. All notices of a public character would be there exhibited, and affixed by the officer wherever else the circumstances should require.

7. All rates, assessments, and parochial documents, would be there deposited, and all militia, rate, land-tax, and other tax business, there transacted; the district officer being (as such) the clerk employed in the conduct of the whole. All meetings for such public purposes, and all petty sessions of magistrates, should be there held, the civil officer being, *ex officio*, the clerk; and all depositions and minutes of proceedings would be preserved by him for their proper uses. The careful preservation of all documents

* Jews and Quakers are excepted from the Marriage Act; but there is no direct sanction given to their marriages, which seem to rest for their validity on the question what was the previous law of England as to marriages had elsewhere than at church, and according to its rites. As to strict proof, such marriages can only, it would seem, be proved in courts of justice by calling witnesses actually present, as there is no provision for making any register or record kept by these parties evidence.

of this sort is of great importance. The constables of the district should be placed in connexion with the office, and in many respects under its superintendence, for purposes of business.

8. The officer in question would be the easy channel of all official *correspondence* on matters of police and internal regulation with the central authorities. This now has to find its way through very uncertain channels. If the magistracy and public authorities had in every district a well known permanent and official clerk, it is obvious not only that many abuses would be prevented, but that many facilities would be afforded for regularity and despatch in every description of business.

9. Such an officer would be authorized to administer *oaths*, take *recognizances*, &c., in magisterial business.

10. As to the business of coroners: this officer should, as such, be coroner, so as to save the present expence of journies, &c. Inquests at least should, where possible, be held *at* the district office; and the documents should be always there deposited, and thence produced at the assizes when necessary.

11. This officer should be the deputy of the sheriff for the execution of many duties now left to very inferior agents; and there are many points connected with the administration both of civil and criminal law, as well as with regard to elections, taking of polls, registering of votes, &c., in which the office could be made eminently useful.

Second, in matters relating to Property.

1. All deeds, wills, &c., executed before such an officer or his deputy, and attested under his seal, should prove themselves *primâ facie* in all courts. Such an execution might either be compulsory or not; but the advantage as to proof would be a considerable inducement, at any rate, to compliance.

2. All deeds to pass the property of *married women* should be *required* to be so executed, and certified on private examination.

3. All deeds intended to be enrolled should be acknowledged for that purpose before the civil officer.

4. If a system of general registration be adopted, the officer might receive and transmit all deeds as if received personally by the registrar, so as to save proof by affidavit of execution, or his attestation of the execution would answer the same purpose.

5. All certificates of parties being *alive*, &c. for public or legal purposes would emanate from the same quarter.

6. *Powers of attorney* for public and legal purposes might be there executed and certified. This—at least so far as illiterate persons are concerned—would probably be required by such bodies as the Bank of England, to prevent the impositions so often practised.

7. Bills, &c., might be noted and protested at the same place by the public officer, at least concurrently with the present notaries. In short, this officer should, as such, be a notary, whose functions should be much more used than at present.

8. All *notices*, where the parties wish to perpetuate the fact, and to save all future proof, might be served through the officer or his subordinate agents; his certificate of the fact under his office seal being annexed, and superseding further evidence in any court.

Third, in connexion with Courts of Law.

1. The new officer should be competent to take *affidavits* in all courts. This might, or might not, supersede the present masters extraordinary, and persons acting by separate commissions from the courts of law. They might all act concurrently, if desired.

2. He should be commissioner for taking all *bails*.

3. We doubt whether it would not prevent much abuse and extortion if he (as the deputy of the sheriff for all purposes in his district) and his subordinates* received and executed all warrants or processes from the sheriff, so as to supersede the present bound *bailiffs* altogether. This would render several improvements in the present system of bail to the sheriff and bail above more easy. *Bail above* might in many cases be taken immediately on arrest, and justified and transmitted.

4. He should be authorized to take and transmit under cover and seal (by post or otherwise) *answers* in Chancery and the Exchequer; appointing guardians for infant defendants, to answer when necessary; so as to put an end to the necessity of having a special *dedimus* and a special sworn messenger on every occasion. The present necessity of obtaining a special writ to constitute an officer of the court, for the sole purpose of taking each particular proceeding, is so vexatious, clumsy, and expensive, that its existence for so long a period is difficult to be accounted for. In London a defendant to a bill in Chancery or the Exchequer pays a shilling for swearing his answer; if he live in the country, he pays (instead of one shilling) the following items for the special *constitution of authorities* to execute this *one office*:—

	£	s.	d.
Expence of the order for a commission, about	1	5	2
Commission (in the Exchequer 1 <i>l.</i> 2 <i>s.</i>) in Chancery	0	11	11
Expence of executing it at the least	2	2	0
Expence of messenger bringing it up at the least	0	17	2

Making at the lowest 4 16 3
But the necessary expence is sometimes nearly double this.

* In-districts where the office would not afford permanent clerks or assistants, the constables would at least be at the command of the officer for these purposes.

5. The same officer would be the authority before whom every *married woman*, whose *consent to an order of court* was necessary, might attend and give it; the result being certified.

6. If he were clothed (as above suggested) with the functions of *surrogate*, he should be empowered to receive and transmit wills for probate, and to administer the oath, so as to supersede the *special commissions* of the ecclesiastical courts. As to *all* these *special commissions* and delegations of authority from the courts, it is surely high time that they should be abolished, by the creation of district functionaries, recognized in all courts. The present system seems founded on the assumption, that every suitor resides within the vicinity of the court, and that it is a matter of *grace and favour* (requiring special delegation on every occasion) to recognize the possibility of the court's functions being to be exercised at a distance.

Under *all* the above heads there are, no doubt, a great many more functions than now occur to us which such an officer would appropriately discharge; and, when once established, he would furnish facilities for the adoption of regulations of every description for improving the administration of local justice and police.

To return to the mere question of *parochial registration*, from which we have been thus digressing, we will shortly recapitulate the principal plans of improvement which might be resorted to, as follows:—

1. The plan of merely *allowing* every *baptism*, *funeral*, and *marriage*, wherever had, to be entered by the minister (or his deputy, if more agreeable to him) on the present parish register, on notification of the fact by personal certificate, deposition, or otherwise.

2. That of *allowing* the actual facts as to *births* and *deaths* to be so entered, without reference to religious rites.

3. That of *compelling* such entries to be made in all cases, so as to form a complete parochial register *in its present hands*.

4. That of *compiling* by a *civil officer* a complete register, from the materials furnished by the parish books, with the addition of births, deaths, and marriages held elsewhere, and duly notified.

5. That of *forming*, by the civil officer only, a complete register; on a system correct in all its bearings, and entirely *independent* of the present record of all religious rites.

Under *any* plan some new regulations are necessary, such as the following:—

1. The *forms* should be amended,—they should be all tabular; and indexes should be required to be kept, forming part of each book.

2. A *metropolitan registry* should be established; to which returns should be periodically made of duplicates or attested copies,

with provisions for general indexes, according to counties; and if nonconformists are provided for in no other way, they could at least be recorded here.

3. The metropolitan registry so formed should be made legal evidence.

4. Certified extracts from either the country or metropolitan registers, verified by the officer's seal, should be at least *prima facie* evidence in all courts.

It need hardly be added, that, whatever scheme of improvement be adopted, many minor details must be well considered, all of the greatest importance to the practical efficiency of any plan.

ART. VII. — LAW MANUSCRIPT REPORTS AND PRIVY COUNCIL PAPERS.

The importance of the English reports of law cases, from the Year Books down to the modern Chancery and Term Reports, is duly appreciated by all who, either as reformers of the law, or as opponents to change in it, have deeply considered the subject. Mr. Bentham, at the head of the one party, has expressed his opinion without reserve, that these stores furnish the best materials possessed by any nation for improving jurisprudence; and Lord Eldon, at the head of the other party, is of course equally alive to the merits of that accumulation of judicial experience to which few judges have made greater additions than himself. It may be expected then, that all parties will approve a design to render more complete what all thus highly estimate in its kind; and if it can be shown that a prudent inquiry into the manuscript reports will remove the known imperfections of this important branch of our law, such inquiry will be encouraged with general applause.

Indeed, in the character and history of our law may be found proofs of a peculiar kind, that an inquiry into the Manuscript Law Reports of the country will much advance both the administration and the reform of its jurisprudence. No reform can be introduced with safety and satisfaction, that does not proceed upon a considerable knowledge of the existing law; and since analogy to sound precedent constitutes the rule for decisions in all the courts, exact records of those precedents are indispensable to the administration of justice; whilst the demonstration of their soundness depends upon the correctness of the reasoning by which the judges have made those decisions. This should have insured official attention to such judgments: nevertheless, for many centuries, the reasons

which have swayed the judges have been preserved only by voluntary reports, and not upon the rolls; so that some of the judgments which have been printed are too incorrect to deserve credit, or to have obtained it. Many of them, however, might receive valuable confirmation or material corrections from manuscript reports taken independently of the records.

There is no doubt, indeed, of the quantity, or of the value, of the Law Manuscript Reports now existing in England. It may be said, without dispute, to be the daily experience of Westminster Hall, that lawyers elucidate the current business by reference to such reports. Nor is any branch of legal study more common than that of correcting the printed laws by careful research into the more successfully preserved manuscript learning.

Again, Sir Edward Coke says, to the same effect: "We have strengthened our opinion with our two great guides, authority and reason, not trusting abridgments and Polyantheas, or taking any thing upon trust; but have searched the fountains themselves, always holding this rule—*Quod satius est petere fontes quam sectari rivulos.*"* And, "the reason wherefore the records of parliament have been so highly extolled, is, for that therein is set down, in cases of difficulty, not only the judgment, but the reasons† and causes of the same by so great advice."‡

Sir Matthew Hale notices the ancient practice in equally strong terms of commendation; urging that the reason of the law, many times expressly delivered upon the record, was stated perspicuously, clearly, and rationally; so that their short and pithy pleadings and judgments do far better render the sense of the business, than the long pleadings often of late unnecessarily used.§

Our early and recent authorities are curious and complete, in support of the position, that by the law of England, correct precedents have ever had great weight. Selden says, of certain legal advocates at the time of the Conquest: "*Item legitur eis tantam secularium facundiam et præteritorum memoriam eventorum (id est plane, ut nunc, annalium juridicorum peritiam), infuisse, ut cæteri circumquaque, facile eorum sententiam ratam fuisse, quum edicerent, approbarent.*"||

Fl etwood, the recorder of London, in his preface to his Index to certain of the Year Books, urges the law student to read reports, and not to confide in abridgments. "I was chiefly induced to compile this work," says he, "by observing the con-

* Epilogue to the 4th Institute.

† "Lord Cowper ordered his judgment, in *Newcomen v. Barkham*, to be entered into the Register's Book; and a very able opinion it is." Lord Mansfield, *Fearne's Contingent Remainders*, p. 574, 7th ed.

‡ 4 Inst. 4.

§ History of the Common Law, Ch. 7.

|| Selden ad Fletam Dissertatio, p. 518, fol.

sequences produced by the abridgment of the very learned Robert Brook. In the course of only five years, during which that volume has been in the hands of the student, they have entirely lost sight of their former better course of reading. This change, I do not doubt, will most materially lessen the knowledge of law in England; and, in order to stay the evil, I have endeavoured to furnish a thread to the entire labyrinth of materials which constitute the treasure of our jurisprudence. In regard, indeed, to epitomes, I have found, in examining the literary monuments of our days, when, as in the reign of Edward III., the judges and lawyers were most learned, they were never in public use, or quoted in the courts. This was the case through Henry IV.'s reign: and to Henry VII., when law judgments were delivered with the greatest ability. Abridgments, indeed, are the shipwreck of literature, and useful only to those who make them. He who is content with an abridgment, is like the miserable and beggarly pilferer who, having neither ploughed, nor sown, nor reaped, comes by stealth to pick up the slender leavings of the harvest. In this opinion I have sought to assist my countrymen to return to the laborious method of their forefathers, and to save the law from depredation, and themselves from ignorance." *

And lastly, in the famous Report of the Committee of the House of Commons, on the delays in Mr. Hastings' trial, we find the following admirable passage: "Your committee do not find any positive law which binds the judges of the courts in Westminster Hall publicly to give a reasoned opinion from the bench, in support of their judgment upon matters that are stated before them. But the course hath prevailed from the oldest times. It hath been so general and so uniform, that it must be considered as the law of the land. It has prevailed, so far as we can discover, not only in all the courts which now exist, whether of law or equity, but in those which have been suppressed or disused, such as the Courts of Wards and the Star Chamber. An author quoted by Rushworth, speaking of the constitution of that chamber, says, 'And so it was resolved, by the judges, on reference made to them; and their opinion, after deliberate hearing and view of former precedents, was published in open court.'† It appears elsewhere, in the same compiler, that all their proceedings were public, even in deliberating previous to judgment.

"The judges, in their reasonings, have always been used to observe on the arguments employed by the counsel on either side, and on the authorities cited by them; assigning the grounds for

* Letter to Chancellor Bromley, prefixed to Fleetwood's *Annalium Elenchus*; and *Year Books*, vol. 10.

† Rushworth, vol. ii. p. 475, *et passim*.

rejecting the authorities which they reject, or for adopting those to which they adhere, or for a different construction of the law, according to the occasion. This publicity, not only of decision, but of deliberation, is not confined to their several courts, whether of law or equity, whether above or at Nisi Prius, but it prevails where they are assembled, in the Exchequer Chamber or at Serjeant's Inn, or whatever matters come before the judges, collectively, for consultation and revision. It seems to your committee to be moulded in the essential frame and constitution of the British judicature.

"Your committee conceives, that the English jurisprudence has not any other sure foundation, nor, consequently, the lives and properties of the subject any sure hold, but in the maxims, rules, and principles, and juridical traditionary line of decisions contained in the notes taken, and from time to time published (mostly under the sanction of the judges), called reports.

"In the early periods of the law, it appears to your committee, that a course still better had been pursued, but grounded on the same principles; and that no other cause than the multiplicity of business prevented its continuance. 'Of ancient time,' says Lord Coke, 'in cases of difficulties, either criminal or civil, the reasons and causes of the judgment were set down upon the record, and so continued in the reigns of Edward I. and Edward II., and then there was no need of reports; but in the reign of Edward III. (when the law was in its height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the record, but then the great casuists and reporters of cases (certain grave and sad men) published the cases, and the reasons and causes of the judgments or resolutions, which, from the beginning of the reign of Edward III. and since, we have in print. But these, also, though of great credit and excellent use in their kind, are yet far underneath the authority of the parliament rolls, reporting the acts, judgments, and resolutions of that highest court.'*

"Reports, though of a kind less authentic than the Year Books to which Coke alludes, have continued without interruption to the time in which we live. It is well known, that the elementary treatises of law, and the dogmatical treatises of English jurisprudence, whether they appear under the names of institutes, digests, or commentaries, do not rest on the authority of the supreme power, like the books called the institute, digest, code, and authentic collations in the Roman law. With us, doctrinal books of that description have little or no authority, other than as they are supported by the adjudged cases and reasons given at one time or other from the bench, and to these they constantly refer. This

* Coke, 4 Inst. p. 5.

appears in Coke's Institutes, in Comyn's Digest, and in all books of that nature. To give judgment privately, is to put an end to reports; and to put an end to reports, is to put an end to the law of England. It was fortunate for the constitution of this kingdom, that in the judicial proceedings in the case of ship-money, the judges did not then venture to depart from the ancient course; they gave and they argued their judgment in open court.* Their reasons were publicly given; and the reasons assigned for their judgment took away all its authority.

"The great historian, Lord Clarendon, at that period a young lawyer, has told us, that the judges gave as law from the bench, what every man in the hall knew not to be law.

"This publicity, and this mode of attending the decision with its grounds, is not observed only in the tribunals where the judges preside in a judicial capacity individually or collectively, but where they are consulted by the peers on the law in all writs of error brought from below. In the opinion they give of the matter assigned as error, one at least of the judges argues the questions at large. He argues them publicly, though in the chamber of parliament; and in such a manner, that every professor, practitioner, or student of the law, as well as the parties to the suit, may learn the opinions of all the judges of all the courts, upon those points in which the judges in one court might be mistaken.

"Your committee is of opinion, that nothing better could be devised by human wisdom than argued judgments publicly delivered for preserving unbroken the great traditionary body of the law, and for marking, whilst that great body remained unaltered, every variation in the application and the construction of particular parts, for pointing out the ground of each variation, and for enabling the learned of the bar, and all intelligent laymen, to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable nature of human affairs, a progressive experience, and the improvement of moral philosophy, from those hazardous changes in any of the ancient opinions and decisions which may arise from ignorance, from levity, from false refinement, from a spirit of innovation, or from other motives, of a nature not more justifiable."†

Lord Bacon and others have been urgent that official reporters should be employed, in order to preserve exact memorials of the judgments delivered in the courts; and although that is not yet done, there has never been wanting a succession of lawyers to take careful notes of those judgments. A part only of such notes

* This is confined to the judicial opinions in Hamden's case. It does not take place in all the extra judicial opinions.

† Hansard's Parl. History.

have been printed, but they are all justly appreciated; and so much of them still remains in correct manuscripts, that it is matter of surprise they should not also be printed. It is admitted to be proper to complete the statutes; to revise the judgment rolls, and year books, and text books; to publish state papers of every kind; but not a word is said of the very abundant stores, now hidden, of the reasons of judges, solemnly delivered upon thousands of cases, which concern the business of all, and may often be the only † existing trace of many judgments having ever been given.

This is a most important matter. From the earliest times the common law has required judges to give reasons for their judgments. The practice of recording these reasons on the rolls, is an indication of this characteristic of our jurisprudence; and the usage which has grown up in some courts,—as that of the King in Council, and its committees, and that of the House of Lords, of rarely giving reasons in deciding causes—is clearly an abuse. Once, the Parliament, and the Curia Regis, received appeals from all the courts; and in all respects treated them in a judicial manner. Gradually, by 27th Elizabeth, and by other steps, the common law appeals, in almost all causes within the kingdom, were withdrawn from the due course; but the rules of the appellate court were unchanged; and whatever business of this kind is transacted at the Privy Council, ought to be conformable to the common and civil law combined. That the frequent delivery of judgment without reasons is illegal, might be shown by a variety of arguments; and the true rule has been followed by a steady usage, which has given occasion to reports of oral judgments of the greatest value; both as evidence of what the law is, and as checks upon the judges who administer it. Accordingly, it is a daily occupation with lawyers, to elucidate the current law cases by reference to such reports, and to improve what is incorrectly printed, by careful examination of what may have been preserved in manuscript with more success.

This will be obvious upon a consideration of a few particulars selected from the following volumes, which were taken up almost casually for this inquiry, and may be called fair examples of the law books of the day. In Bingham's Common Pleas Reports, within a few pages, Mr. Justice Park will be found, upon his own and Lord Kenyon's experience, denouncing Keble, the old reporter, as other judges had done long ago; and Serjeant Wilde, urging the authority of Mr. Justice Holroyd against the 12th Book of Coke; and the venerable Baron Bayley, showing the

† "The Rolls now contain the pleadings only in such actions as the attorneys find it necessary to enter for the sake of proceedings to be taken subsequently to the judgment; and this, in general, is only requisite in the most insignificant actions." Grimaldi's *Origines Gencalogice*, p. 91, 1828.

value of certain old commissions, "if they were extant," as a diligent search would probably discover them to be. The same reports for 1829, 1830, and 1831, exhibit also many recent instances of direct resort, in the Common Pleas, to manuscript law learning. Again, Mr. Swanston, in his Chancery Reports, has supplied most extensive illustrations of the value of such learning, enriching his pages with abundant extracts (more than one hundred in number in vol. iii.) from authentic manuscripts of Sir Samuel Romilly, Lord Colchester, Lord Nottingham, and others; which either correct errors in earlier books, or add analogous decisions to precedents already known. In the second volume of this Reporter may be found an example of the benevolent use that has once been made of this species of learning. An ancient error, which had led to most barbarous sentiments in Christians towards seven-eighths of mankind, is corrected from the *manuscript* of Lord Keeper Littleton. Again, Mr. Amos cites manuscripts no less than ten times, in his brief volume upon Fixtures; and Mr. Sergeant Russel, in vol. i. of his Treatise on Crimes and Punishments, does the same more than twenty times, in less than fifty pages. And lastly, Sir Michael Foster made excellent and liberal use of manuscript reports in writing his invaluable book on Crown Law; and his observations upon them may be extensively applied, at the present day, to the same subject. "The MSS. cited in the following pages," this eminent judge declares, "are genuine. Copies of them are in many hands; and they have been of considerable service. They have given us light upon many points which the printed reports do not afford; and they are the remains of gentlemen eminent in the law. But many of the hasty indigested things, called reports of adjudged cases, stuffed with obiter opinions of judges upon the breaking of a case, which probably never proceeded beyond a slight argument,—these things, mere fragments of learning, the rummage of dead men's papers, or the first essays of young authors, have been the bane and scandal of the law, considered as a science founded on principle. They are, if I may be allowed the expression, the *ignes fatui* of the law; they always bewilder the reader, and frequently mislead him." * To which may be justly added what Lord Glenbervie said, in 1808, of Mr. Cox's Edition of Peere Williams: "It is well known that perhaps the best book extant of Equity Reports has lately received, from the learning of a member of this Society, very important elucidation, correction, and improvement, by an accurate examination of the original proceedings in Chancery on the cases therein contained." †

* Preface to the First Edition of Sir Michael Foster's Crown Law.

† Appendix to First Report on Public Records, p. 383.

“On a careful examination of *Letheulier v. Tracy*,” say Messrs. Barnewell and Alderson, “it appears probable that Fearne, and some other writers who have discussed it, have been misled by the inaccuracy and want of perspicuity both in Atkins’ and Ambler’s reports of it into an important mistake.”*

In like manner, Sir Edward Sugden’s *Book on Powers* contains great blemishes, which the genuine reports of Sir Orlando Bridgman’s *Judgments on Powers* may remove. In the Duke of Norfolk’s case,† there is an example of the same kind; where Lord Keeper Nottingham says of a false precedent:—“Come then we to those which seem most to obstruct the plaintiff’s title,—that is, the resolution in *Child and Bailey’s* case; for upon that judgment, it seems, all conveyances must stand or fall, and our decrees made null. Therefore I have taken the liberty to see what that case is, and how far the opinions of it ought to prevail in our case.

“If that case be no more than is reported by 2 Rolle, 291, then it is nothing to the purpose. A devise of a term to H. for life with remainder to W., and, if he die without issue, to F.; without saying in the life of F.; and so within the common rule of limitations of terms in tail with remainders over. But, if it be as Justice Jones has reported it, 15, then it is as far as it can go on authority; for it is there said ‘living F.’; but the case, under favour, is not always such as is reported there; for I have seen a copy of the record. By the way, no book in the law is so ill corrected, and so ill printed, as that. The term case is reported by Justice Crook, and with that doth Rolle agree in his *Abridgment*, Devise, 612; and this is, in effect, our present case. I agree to it; but that which I have to say to this case is, it must be observed that the resolutions there did go upon several reasons which are not to be found in this case. One reason was taught by my Lord Chief Baron, that Williams having the terms to him and his assigns, there could be no remainder to Thomas F.; of which words there is no notice taken by Mr. Justice Jones. Dorothy, the devisee for life, was executrix, and did assent, and grant the lease to W.; both which reasons Rolle lays hold on as material to govern the case. W. might have assigned his interest, and then no remainder could take place, for the term was gone. He might have had issue, who might have assigned, and put all out of doubt. But the main reason of all, which makes me oppose it, arises out of the record, not taken notice of in any of the reports.

“The record, in this case, goes farther than the books; for the

* 1 Barn. and Ald., 742.

† See *Thelusson v. Woodford*, 4 Vesey, p. 258, for Mr. Hargrave’s account of the manuscript report of this famous case, which has laid the foundation for so many family settlements.

record says there was a farther limitation '*upon the death of F. without issue, to go to the daughter*;' which was a plain affectation of a perpetuity, to multiply contingencies. It farther appears by the record, that the father's will was made 10 Eliz., Dorothy held it to 24 Eliz., and then she granted and assigned the terms to W.; he, under that grant, held it to 31 Eliz., and then re-granted it to his mother, and died; the mother held it to the 1st of Jac., and then she died; the executor to the mother held it to the 14 Jac., and then, and not till then, did F., the younger son, set up a title to the estate; and before that time, it appears by the record, there had been several alienations for a valuable consideration; and the terms renewed for a valuable fine paid to the land. And we do not wonder now that, after so long an acquiescence as from 10 Eliz. to 14 Jac., the judges began to lie hard upon F. as to his interest in the terms; for the reasons given in the report of the case are legal inducements, enough to guide the judgment, of which there is none in our own case."

How successfully manuscripts may be searched in law cases, is apparent from the following MS. note of Mr. Hargrave:—

"In the great case of *Courtney v. Bower*, in C. B. 1699, of which I have a very full MS. report, Lord Chief Justice Treby thus expresses himself concerning Lord Vaughan's Reports, in consequence of having to answer an objection from the case of *Sheppard v. Gosnold*, in page 159, Vaughan. "These reports are so full of mistakes, that I do not think they are my Lord Vaughan's. I have heard it was a posthumous work. Some of the cases are wrote out by himself, and corrected, and received his last hand; and these are good and methodical discourses, and give a true picture of his mind. But there are others, and that of *Sheppard and Gosnold* I take to be one, that were only taken from loose notes; and which he intended to have perfected if he had lived. This I say without reflection on so learned a man. He misreads the words of the very act (of 12 Car. 2, of Tonnage and Poundage), which shows how very imperfect a publication it was." MS. note to Mr. Hargrave's Copy of Vaughan's Reports, 1677.

In the recent proposals for re-publishing the Law Reports from the time of Henry III., "a collection of well-authenticated MS. cases" is included, it being anticipated that a valuable addition may be made to the cases already in print, by a selection from the manuscript notes of individuals of eminent authority, which abound in various private collections: and, should the courtesy of the possessors favour such an idea, it is proposed to publish a portion of these, with the authorities on which they rest.

The materials for amending errors upon this head are indeed

abundant—in the British Museum ; in the libraries of the Inns of Court ; in Doctors' Commons ; in the Universities ; and in numerous private hands. Of late years, too, examples have been exhibited of what private diligence will produce upon this subject, in the reports of Lord Northington's Judgments by Lord Henley ; of Lord Kenyon's by Mr. Hanmer ; of Sir William Blackstone's, by Mr. Elselv ; of Sir Orlando Bridgman's, by Mr. Bannister ; of Lord Glenbervie's, by Sergeant Frere and Mr. Roscoe ; of Lord Hardwicke's, by Mr. West ; and of Mr. Hovenden's late reports. Left, however, to private resources, this MS. learning will be centuries in seeing the light ; although, if judiciously examined at the instance of the public, all that is really valuable in it might be rendered accessible in half a dozen years.

The same point is almost ludicrously illustrated in *R. v. Farley*, a case of 1830, reported in 4 *Carrington v. Payne*, 370. There Mr. C. Phillips says, “in the case of *R. v. Cadman* (*R. & M. C. C. R.* 114), it was considered that the swallowing of the poison was not essential.

“Mr. Justice Park.—There is *another* report of the case (*Carr. Supp.* 237) ; and the two reports differ materially. My *memory* is, that Mr. Carrington's report is accurate.

“C. Phillips.—My argument is, that unless there was a manual delivery to the party, it is not sufficient.

“Mr. Justice Park.—If, against the report *you* have cited, the delivery into the hand is not enough, and the taking it into the stomach is immaterial, I can hardly say what would be enough in any case. I have my *own* note of the case. That being on the Welsh circuit, we certify our opinions under our hands. The Welsh judges have no right to reserve cases directly for the opinion of the twelve judges. They petition his majesty, who refers the matter to us, and we sign a letter stating our opinion ; and of all such letters Lord Tenterden keeps copies. My note of the case is, that the judges were unanimously of opinion that the poison had not been administered, because it had not been taken into the stomach, but only into the mouth.

“Corbet.—I was counsel in the case, and my recollection coincides with your lordship's note and Mr. Carrington's book,” Again, in the same report.

“Mr. Justice Park.—It has been contended, that there must be a manual delivery of the poison ; and the law, as stated in Messrs. Ryan and Moody's report, goes that way. But as my note differs from that report, and also from my own feelings, I am inclined to think that some error has crept into that report.” It is obvious to remark, that in such cases especially, viz. the judges' report, the public ought to have the best report ; and Sir Samuel Romilly urged the propriety of reporting the reasons of judgments

in criminal cases upon unanswerable grounds. "In the present system," says he, "the benefit of example is entirely lost, for the real cause of the convict's execution is not declared in his sentence; nor is it in any mode published to the world. Nothing, then, is learned from the execution of the sentence than that a man has lost his life because he has done that which, by a law not generally executed, is made capital, and because some unknown circumstance or other existed, either in the crime itself or in the past life of the criminal, which, in the opinion of the judge who tried him, rendered him a fit subject to be singled out for punishment. Surely, if this system is to be persevered in, the judge should be required, in a formal sentence, to declare why death is inflicted, that the sufferings of the individual might be rendered useful to society in deterring others from acting as he had done, and drawing on themselves a similar doom. But written sentences, like the reported decisions upon the common law, would stand in the place of statutes. It must, however, be admitted, that it would be still more desirable that, instead of having recourse to such substitutes, the law should be embodied in written statutes." *

A step has been taken by the common law commissioners towards accomplishing a system of *organised reporting*, which unquestionably is at present one of the most essential means of bringing about a due reform of English law. We allude to the recommendation, that "the master or prothonotary of each court should, on the first day of every Michaelmas term, report to his court whether any variation in the practice of the several courts have come to his knowledge in the preceding year, which reports should be communicated to the body of the judges without delay, and orders thereupon made, to be observed in all the courts."

This is one of the recommendations in the first report, which has been commented upon with much learning and judgment by Mr. Fair, in his late observation on law reports. That it should be left to these days to accomplish this task, may be accounted for without assuming that what has hitherto been neglected is not worth attention. Access to the courts of justice, never interrupted in the worst times, enabled the people to note the proceedings,† as, in very early days, their forefathers had done. The stores thus collected have, however, been refused to the public from narrow considerations. Lord Hale's injunction, that his manuscripts

* Observations on the Criminal Law, 1810, p. 24.

† In Charles II.'s reign, Lord Chancellor Nottingham said, a little rhetorically indeed, of the practice of noting the judgments delivered in the court, "There are so many short-hand writers, that nothing can pass from us here but it is presently made public; and though a man do not speak in print, yet what he says shall be immediately put in print." 3 Cha. Rep. 38.

should be confined to the use of the members of his own society, Lincoln's Inn, is well known. The restraints imposed from time to time upon the publication of the proceedings of the courts arose from another principle, not more advantageous to the public than the selfish act noticed in the following passage from the preface to Sir William Jones's reports:—"The manuscript," says the editor, "being lent to Serjeant Glinn presently after the author's death, and by him *appropriated to his own use*, was the reason why it was no sooner made public; and how he prized it may be seen by the notes made with his own hand upon the original copy, and his abridgment of the greatest part of them."*

So, in the preface to the old additions to Dugdale's Monasticon, it is said of the possessors of other manuscripts:—"Some gentlemen, who have valuable antiquities in manuscripts, have too great an esteem for them to trust them out of their sight. There are others who think their manuscripts the less valuable for being copied. Some, perhaps, have treasures they know nothing of, nor will they give themselves the trouble of examining them."†

Lord Bacon advised King James to establish an improved system of reporting; and his majesty gave a pleasant proof of the interest he took in the subject by the sentence on Sir Edward Coke. During suspension from office and honour, "while he had time to live privately and dispose himself at home, the chief justice was to review his reports; wherein the king was informed there were 'many exorbitant and extravagant opinions set down for positive and good law;' and his majesty's pleasure was, that he should bring the same, corrected, privately to himself, that he might consider thereof as in his princely judgment should be found convenient."‡ And at length an assumption to control the right of reporting grew to a great abuse. "I know," says a lawyer of the last century, "it is a contempt of the courts of justice to publish their proceedings. They ought to be published under authoritative care and inspection; but since the Year Books no judicial proceedings have been so published by any court in Westminster Hall, except the State Trials."

"Licences by the chancellor or judge proceed upon the character of the reporter only, without saying a word of the work itself, or that the licensors ever saw it. Such licences, to allow and approve printing and publishing, took their rise from the necessity of a licence to print, as the laws formerly stood; and have continued in the same form of words, without any meaning, since the reason

* Preface, p. vii.

† Preface to Stevens' Additions to Dugdale's Monasticon, p. ii. vol. i.

‡ Act. Council. Reg. MSS., Jan. 30, 1616; quoted in Bishop Nicholson's Historical Library, p. 192, 4to.

of this has ceased. I have ventured to follow the example of Mr. Justice Foster, and to publish my notes of it without leave.”*

A volume of the like illustrations may be produced, showing how important it is to set right as much of what is thus notoriously wrong as the existing materials may allow. It is a mistake to suppose the law is settled by a false precedent. The erroneous analogy which has led to the decisions relied upon is soon detected, and the case itself is attacked unceasingly, as new causes turn upon it, and at last it is given up, after misleading many an unfortunate suitor who has attended to its supposed light. We find the deepest reasoners in the profession of the law entangled with difficulties, which might be spared them by a mechanical provision for exact reports of adjudged cases.

Every effort, therefore, ought to be directed now to rendering our reports complete and accessible.

A particular class of judicial papers, quite neglected, and of the first importance to the most helpless of all suitors for justice, are those which concern the modern Privy Council. Antiquary after antiquary takes infinite and not unprofitable pains to investigate the character of the old *curia regis*; but for that modern board, which to this day exercises some of the most important functions of the *curia regis*, and which has been well declared to be “watched by no scrutinising eye, and controlled by no jealous attentions,”† there is an exemption from criticism and research altogether marvellous. Nevertheless, the matter extant is not less valuable than abundant. The statute of the 16 Charles I., which abolished the Star Chamber and the Courts of Requests (both branches of the Privy Council), left untouched certain other portions of it; as appeals from Jersey, Guernsey, the Isle of Man, from the plantations, from the chancellor on lunacy, from courts martial, and in some original causes instituted by the officers of the crown, and the like. At the Restoration more power accrued to it than the reformers in the reign of Charles I. contemplated; and, in defiance of many attempts by Lord Somers (as of Lord Falkland before), and of others, it retained that extensive jurisdiction until a corrupt usage transferred most of it in effect to the modern secretaries of state. The whole subject calls for examination more loudly than any other jurisdiction of the country. The

* Preface to Report of Lord Camden's Argument in Wyndham v. Chetwynd. This is the case in which Lord Camden delivered his famous sentiments:—“The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends on constitutions, tempers, and passions. In the best it is often caprice; in the worst it is every vice, folly, and passion, to which human nature is liable,” p. 53. One of the best checks on this discretion is systematic reporting.

† Howell's State Trials, vol. xxi. p. 452.

stores of records and manuscript notes calculated to aid the inquiry are voluminous, at the Council Office, at the Admiralty, at the India House, and in many other quarters. The jurisdiction concerns various and peculiarly delicate interests; and there ought to be made an early revision of the anomalous proceedings of every sort, which individuals now institute under what the constitution requires to be the surest, but what usurpations have rendered the most fragile, of all processes for justice, namely, a petition to the king.

It is sometimes said that the dispatch of public business is inconsistent with a subjection of ministers of state and distant authorities to reasonable and legal control, and that, therefore, to give to complaints against them the means of legal redress, or to require reasonable explanations of their conduct, would impede state affairs. The reply is ready, that no such principles of state discretion are acknowledged by the British constitution. James II. and other inconsiderate kings, may have attempted to rule in this way; and it is remarkable, that similar objections were once urged against *reporting* Chancery cases, when, in the progress of the constitution towards a better settlement, more and more certainty was in the course of being imposed upon that jurisdiction. In the preface to the Reports of Cases in the Court of Chancery, published in 1693, we find this very curious passage on the point:—"The title of this book may displease such who have espoused the opinion of the Lord Chief Justice Vaughan, in *Fry v. Porter* (22 Car. II., J. P.): 'I wonder,' saith he, 'to hear of citing precedents in equity; for if there be equity in a case, that equity is an universal truth, and there can be no precedent in it. So that in any precedent, if it be the same with this case, the reason and equity is the same in itself. If the precedent be not the same case with this, it is not to be cited, as not being to the purpose.' To which Lord Keeper Bridgman gave this reply, 'Certainly precedents are very necessary and useful to us, for in them we may find the reason of the equity to guide us; and, besides, the authority of those that made them is much to be regarded: we should suppose they did it upon great consideration and weighing of the matter, and it would be very strange and very ill if we should distrust and set aside what hath been the course for a long series of time and ages.' And this judgment of my Lord Keeper was seconded by the Lord Chief Baron Hale. 'If a man,' saith he, 'be in doubt concerning a case, whether it be equitable or not, in prudence, he will determine according as the precedents have been, especially if they have been made by men of good authority for learning, and have been continued and pursued.'"

"This true equity and right reason," adds the editor, "is in

itself an universal thing; it is the same all the world over. On this we must reflect that the matters about which equity is conversant, come clothed with variety of circumstances, are represented in different shapes, and attended with many collateral points which deserve consideration; and *that men's judgments, especially on politics or morals, can seldom be said to amount to mathematical decisions.* No one can imagine himself to have such refined powers of soul as to decree *equitatem ad pondus.* We must also allow there are some little inclinations, no ways guided by any interest or prejudice, which will sometimes turn the scale. There is something in a man's temper which will insensibly mingle and slide into his best-formed notions and designs. I say such reflections as these will convince us with what great reason a judge in equity will search into deliberate resolutions in cases of the like nature before him, and thereby wisely secure himself from making orders and decrees totally arbitrary. Reports, therefore, in Chancery, should not be slighted or undervalued."

So it may justly be urged, that reports in the Privy Council, and other like jurisdictions, should not be slighted; but that, on the contrary, the circumstances of the parties whom they concern ought to constitute a claim on the government for taking means for promoting their publication.

In the last year, a volume of Privy Council Cases has been published; and a few other such cases are scattered over the books from the date of the earliest printed reports. Three barristers, also, have advertised books respecting the Privy Council, as preparing by them for publication; but it is probable that these writers will fail of commanding access to the best sources of information on the subject. If, therefore, it be desired to facilitate an early settlement of this jurisdiction, and to prepare the way well for a new step in the noble cause of imposing proper checks upon the "fiend Discretion," the record commissioners will speedily include the council proceedings within the range of their researches. A document laid before parliament, upon the motion of the Marquis of Lansdowne, exhibits a striking proof of the extent to which many just rules of the Privy Council have been lost sight of even by its officers. The return to the motion sets out some half-dozen articles, of a century's standing, as the *only* existing orders. Nevertheless, a little diligence could produce a small volume of exceedingly wise regulations, and those of unquestionable authority. The truth is, that it has been part of the modern system to govern by ministers, at their pleasure, in the matters that should be settled at the Council by rule; and the Marquis of Lansdowne will do the public much service, by completing, as lord president, the reform that he began as a member of the opposition. To facilitate such a reform, it would be proper forthwith to collect

what has been done at the Council in times past, and from various sources it would be little difficult to devise a system that should steadily check official delinquencies, and provide a learned court for the correction of official errors.

The more modern documents respecting the Council and the Colonies must be complete in the collections at the Board of Trade and at the India House. In the Harleian MSS., No. 6394, may be found the plan and commissions of the Board of Trade of 1670, and a former plan is in print in Hutchinson's History of Massachusetts. In the Ayscough MSS., No. 2902, is the commission of the revised board of 1696, of which Locke and Lord Somers were members. In the Ayscough MSS. there is also a Privy Council document for doing justice in Ireland; and there is a Privy Council document in the library of Doctors' Commons, containing injunctions on the same subject that could not be surpassed in wisdom. The finely-written catalogue of the Records, in the Chapter-house at Westminster, refers carefully (in pp. 3, 6, 33, and 36) to the stores preserved there, on the subject of the old Court of Requests, respecting Jersey and Guernsey, and the Court of Chivalry (the prototype of modern courts martial), from which appeals lay regularly to the king; and in the Harleian MSS., No. 305, is a very curious abstract of the practice in that appellate jurisdiction, in military causes, which is preserved to this day in many existing rules of the king in Council. In 1719 the House of Lords appreciated justly the value of such records, and recommended that they should be fully examined. (Report of 16th April, 1719, p. 16.) There is also in the Lansdowne Collection, No. 125, what was probably Sir Julius Cæsar's own copy of the acts of the Court of Requests. It contains corrections and important documents for regulating the Privy Council, and a *commission* to the Privy Council in the reign of Edward VI. There are also in this volume some very important rules of proceeding upon petitions to the king, dated the 29th of July, 1604, a document published two years ago in a letter addressed to Sir James Graham, on the jurisdiction of the Council. In the Lansdowne Collection, No. 1, Art. 31, and No. 160, p. 225, will also be found Privy Council matter; and in the Hargrave Collection, No. 240, p. 189 to 289, there is an account of the Court of Requests, with orders and cases; and Nos. 24, 34, 47, 98, 232, 321, 391, 431, and 494, contain papers on the jurisdiction of the Council, which was much discussed in the seventeenth century, and never regularly settled. One of the Harleian MSS., No. 305, exhibits the practice of our ancient kings, in doing justice, in a most favourable light; and affords an example, of which the people are entitled to have the benefit at the modern Privy Council, in all the matters which still remain unappropriated to other special courts. The duty of a judge, to dis-

pense justice to the proper suitors of his court, is not more imperative than the duty of the king to be just to those to whom no other court is open but that of the king in Council. Yet at the present day, by an abuse which requires correction, it is said to be merely at the king's discretion whether he will even *hear* such suitor or not. It is clear, however, that the clause of Magna Charta, that justice shall be denied to no man, is not limited to the courts now established in Westminster Hall. The regular Court of Chancery has been established since Magna Charta, yet Lord Nottingham held that the injunction not to deny or delay justice applied to himself as chancellor. (3 Chan. Ca.) Having derived his jurisdiction from the crown, the great source of justice, his lordship rightly considered his court subject to the rule which he knew controlled the crown. In other words, the derivative court, the Chancery, being bound to do justice in the special matters delegated to it, only because the original authority was bound to do justice in all things that could be brought before it, the inference is irresistible, that justice ought to be dispensed in such matters as are not yet delegated from the king, by the same rule, as in those which have ceased to be vested in the crown. The failing to attend to this principle has led the common law commissioners into the strange proposition, that an Englishman's right to justice is of modern growth. (First Report, p. 80.) A more unfortunate error could not have been made; but it is conceived that a due examination of the reports of cases before the king in Council will entirely clear up the subject, and furnish abundant materials for the future settlement of this jurisdiction upon safe and satisfactory principles.

To the objection, that wise reforms will substitute codes of law in the place of the system of precedents, a decisive reply is furnished by the experience of the French: a recent brief inquiry produced the following curious proofs, that the Code Napoleon, advantageously as it has abridged law precedents, and greatly as it has thereby improved modern jurisprudence, has yet left much undone in this respect. This has been shown again and again as to printed law learning; and the following remarks seem to be conclusive as to MS. reports.

In a case of 1831-2, in the Supreme Court of Appeal in Paris, the manuscript notes of decisions at Bourdeaux, taken half a century ago by a celebrated advocate, were cited, and received by the judges with the greatest respect; the reputation of the old *reporter* being such, that few causes are considered to be bad, if the points involved in them happen to be supported by the authority of his *manuscript* notes. This case turned upon a question relating to the *civil* customs of Bourdeaux. But even in criminal causes, which every where are subject to fewer doubts than civil causes,

the most able lawyers in France studiously note the daily judgments, and the reasons which influence the judges in their decisions. The imperfections in the practice of reporting have hitherto left the record of such judgments and reasons to private study; and, accordingly, a diligent inquirer could have no difficulty to find in Paris, collections of the greatest value for settling the law, in manuscript.

In the *Themis*, a law magazine of great merit published in Paris, there are the following papers upon the subject of law manuscripts, which indicate its extent, and the importance attached to it by learned men, even in France, the country of codes.

Vol. I., 1819, p. 94.—This is a paper upon the unpublished letters on legal subjects of the great lawyer, Cujas, with an autograph of a letter to Pithou, in these words:—

“ I return you the Theodosian Code, and Jornandes, with my apology for writing so short a letter, being on the point of setting out for Valence. I brought from Venice the fifteen first books of the *Basilica*, ten numbers of which are entirely new to all the world.

“ *Votre Frere et meilleur Ami,*

“ JA. CUJAS.

“ *Turin, 7th August (1568)."*

Ib. p. 400.—Dr. Closs is arrived in Paris, from Tubingen, to consult manuscripts, in order to correct a new edition of the *Corpus Juris Civilis*. He has lately visited Milan, Florence, &c., for the same purpose.

Ib. Vol. III. p. 185, 278, 447.—The notices of some discoveries made by Dr. Closs in MS. law learning in Italy, and Germany.

Ib. p. 477.—This is a letter of a French advocate, not unknown in London as an unwearied inquirer into our institutions.

“ TO THE EDITOR OF THE *THEMIS*.

“ *Bourges, 12 August, 1821.*

“ After wandering over the plains of Salonne, and visiting the ruined castle of Charles VII., I reached Bourges, the seat of legal science in the sixteenth century. An architect would have hurried away to the finest of the *Basilicæ* of France; a merchant would have done homage to the renown of Jacques-Cœur, who, in the fourteenth century, sent fleets to every port in the Mediterranean; and the lovers of romance would have given an eager ear to the wonders of the subterranean caverns of this place—a subject fit for the pen of Mrs. Radcliffe or Walter Scott. I, who am haunted by the recollections of Alciat, of Cujas, and Doneau, went with equal eagerness to their learned remains in the library. I found my way across the melancholy and deserted streets of the city, once thronged with students, and distinguished by the name of *La Nouvelle Beryte*, but which now is overgrown with weeds. *Troja fuit*. The library, which belonged to the school, is gone, although two of the pro-

fessors still remain, to impart learning to the royal court, and to keep alive the invaluable traditions handed down from the classes of Cujas.

"Without doubt, the finest MS. at Bourges is one of Sallust, of the ninth century; there are in the place altogether 300, but they are not yet catalogued. I made out a few titles in an imperfect list; but, after four hours of hard labour amongst printed books, and every sort of unprinted documents, I failed in the search, except by discovering some literary criticisms of Launcelot, and came away covered with glorious dust, resolving to visit the place another year, in the hope of better success.

"JOURDAN, Docteur en Droit."

Ib. Vol. V. p. 313, 527.—These are notices of manuscripts of the Institutes of Justinian, known to exist in Belgium and Chartres.

Ib. Vol. VI. p. 521.—This is a notice of the legal discoveries of Mai, in the Vatican.

Ib. Vol. VII. p. 50, 90.—These are notices of Roman law manuscripts at Tours and in Russia.

Ib. p. 165.—This is a very learned account of the use which Cujas made of such manuscripts as those which are mentioned in the foregoing letter to Pithou.

Ib. Vol. VIII. p. 209, and Vol. VIII. p. 153, 1827-8.—This is a long notice of the Roman law manuscripts, preserved in the great cities in France. The writer is Dr. Haenel, of Leipsic, who has since published an extensive catalogue of English law manuscripts; which, however, are unfortunately confined, for the most part, to the fine collection of Sir Thomas Phillipps.

Ib. Vol. IX. p. 321.—This is an essay, equally learned and interesting, upon the manner in which Cujas procured his manuscripts of the Basilica, and what has since been their fate.

To these notices it is superfluous to add a notice of the late discovery of the famous work of Gaius, mentioned in Mr. C. P. Cooper's Letters.

Ib. Vol. X. p. 121, 1829.—To the English lawyer, this essay on the "Unpublished Sources of the old German-French Jurisprudence," will be more interesting than the foregoing inquiries into the MS. stores of the Roman codes. By the favour of Sir Walter Scott, we are all familiar with the bold burghers of Liege. Probably they deserve more honourable mention, in all respects, than it was consistent with Sir Walter's toryism to afford them, on some points. But it has remained for the more modern jurists of Belgium to prove that the courage of their forefathers won many guarantees to liberty, almost as early in Flanders as our forefathers secured them in England. The maxim that the poorest man's house is his castle, is traced in the Liege manuscript, called the Pavillard, to the year 1316; and the milder sanctions of the old German-French laws are distinctly perceptible at Liege in a previous century, with other marks of a German origin, in the

institutions granted to the people of that city, by charter, a few years before the date of our Magna Carta.

This "Pavillard" seems to be short, and, if not yet published, the record commissioners would do the English student of the *sources* of Magna Carta a service, by causing a copy to be printed for general use.

The French law antiquary, Broussel, printed in the year 1750 a still more remarkable document upon the subjects for which hitherto Magna Carta has been the principal authority. It is a charter expressed to be granted to Normandy in 1155, and may be found in the first article to the Appendix to M. Broussel's *Nouvel Examen de l'Usage Journalier des Fiefs*. It is too curious, and, if genuine, too important to be passed by. But it bears some internal marks of being the production of a later period of time. It contains direct guarantees of the great articles of King John's and Henry III.'s charters; and its genuineness is supported by the high reputation of Broussel, and by the researches respecting the Liege charters just mentioned. It has also been relied upon as genuine by a learned advocate of Rouen, who has produced curious proof of the guarantees afforded by Norman law against arbitrary law.

The amount of revenue drawn from India gives to that country a more than usual claim upon the care of the government in regard to a matter, which, like the publication of law reports, is beyond the present capacity and habits of the Indian public. Few things would confer greater benefit upon India, than a printed selection of the MS. cases already voluminously reported; and the establishment of a judicious system of reporting, in print, future law cases there. "An evil is want of publicity," says Rammohun Roy, to the House of Lords, "owing to the absence of reporters and of a public press, to take notice of the proceedings of the courts in the interior. Consequently, there is no superintendence of public opinion, to watch whether the judges attend there once a day or once a week; or whether they attend to business six hours or one hour a day; or their mode of treating the parties, the witnesses, the native pleaders, or law officers, and others attending the courts; as well as the principles on which they conduct their proceedings, or regulate their decisions; or whether, in fact, they investigate and decide the causes themselves, or leave the judicial business to their native officers and dependents. In pointing out the importance of the fullest publicity being afforded to judicial proceedings by means of the press, I have no reference to the question of a free press for the discussion of local politics, a point on which I do not mean to touch." Appendix to Report from the Select Committee of the House of Lords, on the Affairs of the East India Company, House of Commons' Papers for 1831, No. 320, p. 727.

This eminent person adds that, "at present, the judges depend on the interpretation of their native lawyers, whose conflicting legal opinions have introduced great perplexity into the administration of justice;" (*ib.*) an evil only to be removed by codes *and printed reports of judgments*.

A proof of the necessity that this matter should be taken up by the government, is to be found in the difficulty which private persons experience in publishing such books with profit. A volume of the current Indian and Colonial appeals, at the Privy Council, has been lately printed without much encouragement; and during two years an attempt has been made in vain to induce the law booksellers to print one or more similar volumes of the earlier judgments of that court, which are almost unknown to any but collectors of manuscripts.

The foregoing remarks as to India may be applied, with great truth, to the colonies at large; and more particularly to the ceded colonies, where the systems of law are derived from foreign sources, upon the administration of which public opinion in England is a less efficient check than upon the English law abroad. A selection from the stores of MS. learning to be found in the records at the Cape of Good Hope, Ceylon, and at the West Indian Dutch colonies, might be published with great advantage: and the more distant settlements of New South Wales and Mauritius would derive great protection from the systematic promulgation of the judgments of their respective courts, now left in almost uncontrolled possession of their neglected parchments, and too often abused, because unsuspected, judgment-seats.

No school more needs public support than a school of shorthand writers; from which might be selected good and well-paid reporters for the courts of India and the colonies.

"In America, (as we learn from a late publication*) law reporting is more and more provided for by the state governments. In 1831, the legislature of Illinois directed 150 copies of the reports of their supreme court to be bought by the public. In 1830, Alabama voted 800 dollars a year to the reporter of the Supreme Court; and the like occurs in most parts of the Union, in the best spirit of Lord Bacon's advice in England two centuries ago.

"In America, as elsewhere, valuable law manuscripts exist, the careful publication of which would give certainty upon many points not likely otherwise to be rescued from the influence of doubt, and, worse—discretion. Such materials must abound in the United States upon a particular class of cases, as interesting to them historically as to Great Britain legally. Until the revo-

* Mr. Howard Hinton's History of America, vol. ii. p. 358.

lution in 1776, frequent appeals were made from the colonies, on various subjects, by petition to the king. These petitions were heard regularly at the Cockpit; and, for the most part, the leading lawyers of England were the advocates employed in these causes. The judicious course of Lord Somers in such a case, from Boston, has been noticed; and Lord Mansfield is known to have had great practice there. The subjects being rarely interesting to the English bar, a very few reports of the arguments are published in our law books; but it is clear that the agents of the transatlantic parties sent home large details of every thing that passed; and, in desultory notices of Privy Council causes in American books, there is proof that some of these details are preserved, as in Belknap's and Hutchinson's Histories of Massachusetts, and in the collection of the Boston Historical Society; to which society there were lately sent the printed briefs and petitions in the very curious Privy Council appeal of "The Last of the Mohicans," an appeal which, in the fact of its having been seventy years before the English tribunal, furnishes a sufficiently clear illustration of one cause of the ruin of the native tribes. These Privy Council proceedings are important in the United States as matter of constitutional and legal history; but to the existing English colonies the precedents which some of them would furnish of wise decisions, and the warnings which might be derived from the manifest errors exhibited in others, would be of the highest value."

"In New England there are extant also manuscript law cases, taken before the revolution, by such a man as Josiah Quincy, whose short report, written from London in 1775, of a speech of Lord Chatham, is one of the most precious remains we possess of that great man's oratory."

"The manuscripts in England affecting America are numerous. One of Sir Matthew Hale's, on the law of colonies, contains the following very curious passage:—"Concerning the plantations of Virginia, New England, Bermuda, and other islands and continents towards the West Indies, and, also, our plantations in Africa and the East Indies, the course of their acquisition was, that the king issued a commission to seize them: thus, Virginia and New England were seized in 4 Jac. I.; Greenland and the northern plantations in 1 Phil. and Mar. pat. 3; the Carribbee Islands by Warner; and so divers others Presently upon the acquet the English laws are not settled there, or at least only temporary, till a settlement is made; and, therefore, we see there administration of justice and law much differing from the English laws, but the people carry with them those English liberties which are incident to their persons." *

* Lord Hale's *Prærogativa Regis*.—British Museum—Hargrave MSS. No. 81, p. 46.

ART. VIII.—*The Library of Entertaining Knowledge. Criminal Trials.*—Vol. I., 12mo.—Knight. London.

The object of the author of this work has been to present to the public, in an attractive and popular form, a series of trials, chiefly selected from the voluminous compilation known by the name of the State Trials. It forms the 16th volume of a miscellaneous series, published under the superintendence of a society whose labours profess to be directed to the diffusion of useful and entertaining knowledge.

The work under review is obviously the fruit of considerable care and research, guided by a correct judgment, and aided by a familiar knowledge of our criminal jurisprudence. Whether the expectations of the society or of the author respecting the popular attractions of such a work be well or ill-founded, will best appear by the event; but it cannot be doubted that there is at least a large class of readers to whose professional literature it will not fail to be deemed an interesting and valuable accession.

The trials comprehended in this first volume begin with that of Sir Nicholas Throckmorton, in the reign of Mary, and conclude with the trial of Sir Walter Raleigh, in the early part of the reign of James I. Three others intervene, which are selected from the intermediate reign of Elizabeth. The report of each trial is preceded by a short memoir of the party under prosecution, or, at least, a notice of such transactions of his life as tend to explain and illustrate the evidence produced at the trial. The account of the proceedings themselves is compiled from various sources, of which the most valuable and original are the MS. collections of the British Museum, and the unpublished examinations and documents in his Majesty's State Paper Office. A few critical observations on the mode of conducting the prosecution, the doctrines advanced during the trial, the nature of the evidence, and the probable guilt or innocence of the party accused, close the case.

From this outline of the work it will be seen that it is by no means to be regarded as a mere popular abridgment of the State Trials, but is, in fact, a work which, as far as it extends, is more copious, accurate, and instructive, than the State Trials themselves: a circumstance which we are the more solicitous to make known, inasmuch as the unassuming form of its publication is hardly calculated to convey an adequate idea of its just pretensions.

The volume commences with a proemial dissertation, of which the greater and more interesting portion is occupied in pointing out the leading features which distinguish the criminal procedure during the earlier periods of our legal history from the course and practice of the courts at the present day. The application of

torture in conducting preliminary investigations before the Privy Council, the nature of the evidence upon which the conviction of the offender was usually grounded, the arbitrary exclusion of oral testimony wherever the interests of the prosecutor might be put in peril by its production, the total refusal of *all* testimony on behalf of the defendant, and the unscrupulous use of confessions obtained by the most unwarrantable intimidation, and offered in evidence not only against the parties who made them, but even against those who were incidentally accused in them, form the principal topics of observation.

In addition to the well-known authorities on the early use of the rack in this country, the author's researches have supplied him with several original facts illustrative of its history, which attest that, from the middle of the fifteenth century, until the Commonwealth, this method of extorting testimony from the lips of an unwilling witness, or a suspected accomplice, though uniformly disowned and repudiated by the courts of law, was habitually resorted to by the privy council;—nay, it is a remarkable, and very mortifying fact, that we find the same eminent persons, who have successfully vindicated the law of England from the stain of so senseless a cruelty, submitting in their capacity of privy councillors to act a part in the tragic iniquities which as lawyers or judges they had strenuously denounced. “It is worthy of remark,” says Mr. Jardine, the author of the work before us, “that in almost every instance of torture to be traced during this period, the name of Sir Edward Coke, the lawyer and patriot, who in his writings inveighs so strongly against the practice, is found, either as a commissioner to execute this barbarous process, or, as a privy councillor, to direct it.”*

It would be idle to attempt to reconcile the conduct and professions of such men with each other, or to uphold their consistency by alleging that the proceedings of the king's ordinary courts were regulated by a different law from that which governed the council table. Their expressions of unqualified disgust and abhorrence at the use of torture, and their absolute denial of its legality and constitutional spirit, forbid us to suppose that they intended to disclaim it only as a process of the *common law*, while they were prepared to admit it as a warrantable and proper adjunct to the jurisdiction of the *council*. Can it be conceived that a practice, declared by Lord Coke† to be repugnant to the great charter, should be deemed by him to be consistent and constitutional when administered by the royal warrant? If he could think the interests of humanity and justice were concerned in repelling from the courts of Westminster the scandal of so foul an usage, can

* P. 16.

† 3 Inst. 85.

any honest reason be suggested why this virtuous indignation should evaporate when his services were required in the council chamber? But, in truth, the love of justice, the spirit of independence, and those sound maxims of constitutional liberty which pervade the later writings, and distinguished the parliamentary conduct, of that great lawyer, were in him principles of very tardy growth. They are rarely to be detected in the labours of his official life; and it seems probable that they never fully expanded into ripe and vigorous patriotism until the royal displeasure had expelled him from the service of the crown, and prompted him to the nobler duty of serving his country.

There is indeed some reason to believe that the right of applying the rack, though unknown to the *common law* as a mode of examination, was considered at this time to be a legitimate appendage to the prerogative, to be exercised only by special mandate of the king in council. The manner in which the question was propounded by Charles I. to the judges in Felton's case, may thus be explained to import, that the king, being willing to subject the prisoner to it, was desirous, if possible, of delivering him over to the ordinary courts for that purpose, instead of resorting to the extraordinary powers which he supposed himself to possess in virtue of his prerogative: "For," said the king, "if it might be done by *law*, he would not use his *prerogative* in this point."* If this interpretation be correct, it indicates something like a scruple on the part of the king to resort to so extreme a step with no other warrant than his own authority. It explains, too, what would otherwise be an unaccountable inconsistency, that the king, who appears to have *spontaneously*† proposed the appeal to the judges, should have continued to issue warrants for the application of the rack, after the judges had expressed so decisive an opinion against its legality. The last authentic record of the practice is to be found in a warrant of the date 1640, still extant in the State Paper Office; but the author has not been able to find any later traces of its use in this country. It will, however, be worth while for the author (if he shall think fit to pursue his researches upon this interesting subject of inquiry, with a view to ascertain the first introduction as well as the final disuse of torture), to direct his attention to the following passage in the Diary of Pepys. "Lord Sandwich told me of poor Mr. Spong, that being, with the other people, examined before the king and council (they being laid up as suspected persons, and it seems Spong is so far thought guilty as that they intend to pitch upon him to put to the rack, or some other torture), he do take knowledge of my Lord Sandwich, and said that he was well known to Mr. Pepys."—Diary, Oct. 27, 1662.

* Rushworth, cited p. 20.

† See Rushworth, ib.

The authority of Lord Sandwich is too respectable to be slighted: it would therefore appear that if Charles II. did in fact depart from the usage of his predecessors, in this respect, there still prevailed within the precincts of his court, if not a positive *animus revertendi*, to the old practice, at least a very indistinct perception of its illegality.

With regard to the course of evidence observed at trials within the period under review, Mr. Jardine adopts the opinion of those legal antiquaries who affirm that the trial by jury in its origin and early practice was in fact a trial by *witnesses*, summoned from the immediate scene of the supposed offence, to give information to the judge respecting the particulars of a transaction, which they were presumed to have seen or known. Hence, perhaps, the practice, which we shall hereafter have occasion to notice, of fining jurors for a false verdict, may originally have been analogous to the power exercised at the present day of committing a witness for manifest perjury or prevarication.* Hence, too, the uncere- monious treatment of the refractory Hampshire jury, summoned by Henry III. to discover the authors of certain outrages in their neighbourhood, and consigned by him to "feed on doleful thoughts" in the crypts of his castle at Winchester, was by no means so unreasonable an exertion of authority as a modern jury might be inclined to think it.†

The production of additional witnesses to supply the defective knowledge of the inquest, and to enable them to give a more satis-

* *Crim. Trials*, p. 119.

† *Fecit igitur dominus Rex convocare Ballivos et liberos ipsius comitatus, scilicet Suhamptonie. Et ait illis, torvo respiciens intuitu: "Quid est quod de vobis audio? clamor spoliatorum ascendit ad me. Necesse habeo descendere. Non est adeo infamis comitatus, vel patria, in totius Angliæ latitudine, vel tot facinoribus maculata. Ubi enim præsums sum in ipsa civitate, vel suburbio, vel in locis conterminis, fiunt deprædationes et homicidia. Nec hæc mala sufficiunt. Quin imò ab ipsis malefactoribus exinde cachiannantibus et inebriatis *vina mea propria a bigis captis diripiuntur* et prædæ patent ac rapinæ! Quid ulterius tolerantur talia? Pudet et tædet de factore hujus civitatis, et partium adjacentium," &c. . . . Hoc autem erat in aulâ castri Wintoniensiæ, præsentem Episcopo ipsius civitatis W., et exclamavit Rex subito et horribiliter; "Claudite fores castri; claudite continuo!" Electi sunt igitur ex ipsis Wintoniensibus et de comitatu Suhamptoniæ duodecim, ut jurati de furibus, quos noverant, nomina exprimerent. Et semoti super hoc longum habebant tractatum. Erant autem bene custoditi. Et post diuturnam deliberationem vocati, nullam prorsus de furibus voluerunt facere mentionem. Quod multum Regi displicuit. Sciebat enim quod aliquid de consilio latronum sciebant. Et ait Rex, quasi in furore iræ conceptus: "Diripite hos subdolos proditores præcipitateque ipsos in carcerem inferiorem ligatos arctissime. Reticent enim et celant quæ deberent referre, ab Episcopo suo procul dubio excommunicati. Ecce favor et consensus! Eligite mihi alios duodecim de civibus Wintoniensibus et de comitatu Suhamptoniæ qui nullatenus veritati rebelles super requirendis mihi demonstrent veritatem." Advocati igitur alii duodecim, postquam perceperunt quod primi duodecim, quia veritatem suppresserant, incarcerationibus *suspendendi*, coeperunt vehementer formidare, dicentes ad invicem, "et nos simile judicium subiemus, si de veritate requisiti quippiam suppressimus." Et post longum et secretum sermonem quem simul habuerant processerunt in medium, et resolutis linguarum vinculis multorum*

factory statement of the truth to the court, was an improvement gradually and naturally engrafted on this system, until at length it became the most valuable and important part of the proceeding, although there is perhaps no assignable period at which this improved practice can be said to have entirely superseded the private knowledge of the jurors. It is remarkable, that although the modern theory of the trial by jury must have been fully established long before the reign of Charles II., yet the decision of the judges in *Bushell's case* (22 Car. II.), which settled the illegality of fining jurors for an improper acquittal, distinctly recognizes their right to found their verdict upon any private information they may happen to possess; for one of the reasons assigned for that decision by the court is founded on this argument, viz. that however strong the convicting evidence may be, the jury may yet be privately acquainted with facts which may well warrant their belief of the prisoner's innocence.*

The early abridgments and law books are remarkably deficient on the head of evidence, so that there is little assistance lent by them in tracing the history of legal procedure as connected with this subject. We may, however, infer from a passage in Sir Thomas Smith's *Commonwealth*,† that upon ordinary trials for felony it was usual for the witnesses to deliver their testimony orally in open court. Yet it is certain that, for centuries, this usage was so far restrained by the courts (at least in state prosecutions), that the written examinations of parties, upon whose evidence the prosecution was founded, were uniformly received without requiring the production of the witnesses themselves. Without attempting to extenuate this pernicious practice, we may be permitted to observe that the exclusion of *vivâ voce* testimony on such occasions was so habitual, and was so consonant with the maxims formerly prevailing, not in this country only, but almost universally, that it would be in the highest degree unjust to the memory of many eminent men, who presided over our courts in those days, to impute to them any peculiar severity of disposition, or any flagrant and unwonted iniquity, in refusing to depart from the established rules of criminal procedure. The vehement invectives which modern writers have sometimes launched against the defunct instruments of injustice have not always been founded on due consideration. In forming a judgment of the conduct of men

furta et facinora detexerunt, quorum quamplures erant de confinibus partibus præcipue de Autona, et de libertate Episcopi de Tantonæ. (Matthæi Paris, Hist. Major. sub Ann. 1249.) Some thirty or forty malefactors were eventually hanged, to the great relief and benefit, as Matthew tells us, of the vicinity. Whether the jury were among the number does not appear.

* See Vaughan's Reports, p. 147-9.

† Cited *Crim. Trials*, p. 25.

in past ages the maxim of Lord Coke ought not to be overlooked:—

“Judicis officium est, ut res, ita tempora rerum Quærere.”

Let them call to mind the observation of the sagacious Bacon, that there are *vitia temporis*, as well as *vitia hominis*, and remember that if time, and experience, and the exertions of patriotic men, and many political vicissitudes, have respectively contributed their contingent to the amelioration of our jurisprudence, the improved practice of the courts in modern times can afford no standard which can fairly and logically be applied to the conduct of Plantagenet or Tudor judges, to be the measure of their merit, or the criterion of their moral responsibility.*

But though we are of opinion that the judicial character before the Commonwealth has occasionally been the subject of too sweeping a censure, it is difficult for charity itself to suggest any palliation for the treachery of those functionaries who were engaged in taking the examinations on which the verdict of the jury was to be afterwards founded. Many of the original documents, still preserved in the official repositories, and purporting to contain the genuine confessions of the parties examined, offer instances of shameful omissions and suppressions. Some of these, of a more venial character, have no other apparent object than a political one; whilst others are to be found in which the suppressed passage either materially qualifies the statement of the witness, or affects his general credibility. Of the latter class we may select an example from the trial of the Earl of Essex, in which the examination of Sir Christopher Blunt, offered in evidence on the part of the prosecution, forms the subject of the following communication from the secretary of state to the attorney-general:

“Sir,—I pray you, if possibly you can, let not Blunt’s words be read, wherein he saith, that if he were committed any further than to the Lord of Canterbury’s house, the Lord Keeper’s, or Mr. Comptroller’s, he would do, &c. My reason is this—it will show a spirit of prophecy, and, now confessed, *seems a little to savour as if he did coin it, &c. &c.*”

“Your’s assuredly,
“ROBERT CECYLL.”

The writer then suggests, in a postscript, the very words which he would have substituted:—“Methinks it might be in these words,

* Hudson, in his treatise of the Star Chamber, strongly condemns the use of written depositions:—“Now, concerning the persons of witnesses examined in court, it is a great imputation to our English courts that witnesses are privately produced, and how base or simple soever they be, although they be *testes diabolares*, yet they make as good a sound, being read out of paper, as the best; yea, although a lewd and beggarly fellow take upon him the name and person of an honest man, and be privately examined, this may be easily overpassed, nor easily found out,” &c.—2 *Collectanea Jurid.* p. 200.

‘that if he were not committed to any prison,’ or in some such like; or else wholly that portion left out; but in anywise, let not these places be named, because it proved so *ex post facto*.”*

The attorney-general seems to have adopted the latter suggestion, and the passage has been accordingly “wholly left out,” in the copy read at the trial.

The extraordinary latitude allowed in the admission of hearsay evidence, will sufficiently appear by an instance on the trial of Sir W. Raleigh. In order to establish his treasonable intentions, one Dyer, a pilot, was called, who deposed to the following effect:—“Being at Lisbon, there came to me a Portugal gentleman, who asked me, how the king of England did, and whether he was crowned? I answered him, that I hoped our noble king was well, and crowned by this, but the time was not come when I came from the coast for Spain. Nay, said he, your king shall never be crowned, for Don Cobham and Don Raleigh will cut his throat before he come to be crowned!”† Yet this *dictum* of an anonymous Portuguese gentleman at Lisbon was admitted to confirm the proofs of Raleigh’s conspiracy, on the miserable pretext that “it must perforce have arisen out of some preceding intelligence, and showed that his treason had wings!” Preposterous as such testimony may appear at this day, it hardly eclipses in absurdity the doctrine which had previously been laid down in Thomas’s case, viz.; that if Sir Thomas Wyatt deposed to a report which he had heard from John Fitzwilliams, who received it from Sir James Crofts, who had it from Sir Nicholas Arnold, who heard it from the prisoner himself, then Sir Thomas Wyatt was a good and sufficient witness to make up the full complement of proof within the statute of treasons.‡ Nor was the court content to stop here, and confine the admissibility of hearsay to the third or fourth generation; for the learned reporter closes his enumeration of the different links in the chain of evidence by a significant “*et cætera*,” meaning (it is presumed), that the proof of a fact may be transmitted, unimpaired, from mouth to mouth, through an *indefinite series* of witnesses, and finally discharged into court by the last recipient with all the precision and certainty of an electric shock.

We may observe, in passing, that the frequent admission of the loosest evidence at the period under review may be adduced to show that the progressive changes, which have been introduced into the administration of law, have not invariably tended (as some have supposed) to *enlarge* the rules of evidence. A slight acquaintance with legal history will supply many instances to confirm this impression. Thus the statute of James I., which restrains the admissibility of a tradesman’s books to the period of one year after

* Crim. Trials, p. 342, note.

† Ibid. p. 436.

‡ Dyer, 99, b.

the entry made, seems to imply that the books had previously been admitted as good evidence *per se*, without any of the qualifications which the courts have since superadded. It is, indeed, to be doubted whether the maxims prevalent in a barbarous or uninformed period of society have a necessary tendency to *narrow* the rules for the reception of evidence. The facility with which uneducated people lend their belief to the vaguest rumours and the most imperfect proofs, would seem to lead us to an opposite conclusion. Scepticism is certainly not the attribute of an illiterate age, and is, perhaps, natural in none. "The natural disposition," says Dr. A. Smith, "is always to believe. It is acquired wisdom and experience only that teach incredulity, and they seldom teach it enough. The wisest and most cautious of us all frequently give credit to stories, which he himself is afterwards both ashamed and astonished that he could possibly think of believing." *

After all, it must be acknowledged that the administration of justice in past times, in this as well as other countries, is not to be seen to the best advantage, and in its most amiable point of view, upon the trial of offences against either the subject or the sovereign. A prisoner who lies under the *charge* of any flagrant crime, is already, in vulgar estimation, more than half convicted; and the law has, in too many instances, been framed in conformity with the popular prejudice, denying to the prisoner the most effectual means of defence, and supplying too readily the instruments best adapted to ensure conviction. In prosecutions conducted at the instance of the sovereign power, the prospects of the accused were still more unpromising. In the numerous cases that occurred under the Tudor and Stuart princes, before the Commonwealth, there are hardly more than two recorded instances of acquittal; so that the unhappy victim of state suspicion, as he passed through the portal of justice, might well be admonished, "to leave all hope behind!" In such cases, where the sole object of the proceeding has been to extinguish a refractory subject, or to impose silence on his inconvenient loquacity, it is, indeed, to be expected that we should find the rules of evidence expanding or contracting themselves with a facility precisely adapted to the single end in view.

Another prominent feature in the trials before us is, the practice of receiving the confessions of accomplices as evidence, not only against the parties making them, but also against third persons, whom the confessions incidentally implicated. The rule, as laid down by Sir Edward Coke, and recognized by Lord Ch. J. Popham, in Raleigh's case, is expressed in these terms: "Of all proofs the accusation of one who, by his confession, accuses first himself, is the strongest. It is more forcible than many witnesses, and is

* Smith's Moral Sentiments, part vii. sect. 4.

as the inquest of twelve men." (See Sir Ed. Coke, p. 406, and Lord Ch. J. Popham, p. 420.)*

The author justly conjectures that this doctrine originated in the ancient law of approvement, by which a confession, duly and formally taken under certain circumstances, countervailed the finding of a grand jury, and was of itself sufficient to put any party, incidentally accused in it, upon his trial before a petty jury. Yet it is obviously no legitimate consequence, that matter, sufficient to dispense with a previous presentment, ought, *therefore*, to be admitted upon the trial, not only as evidence, but as the *strongest possible* evidence. It might as logically be contended, that a true bill found by a grand jury ought to be strong evidence to the petty jury of the offence alleged in the indictment. If the confession of an accomplice, under such circumstances, be evidence *at all*, it is on principle sufficient evidence to *convict*; and thus, a case might be easily conceived to occur in those days, when approvement and torture and written testimony were the fashionable modes of investigation, in which a prisoner might be deprived of the protection of a grand jury, arraigned, tried, convicted, and hanged, upon the single authority of a paper revised by the privy council, perused and settled by the attorney-general, and signed by an accuser under the imminent peril of being handed over to the strict embraces of the *scavenger's daughter*, or of having his person gradually protracted by the "gentler" persuasives of the *maiden in the Tower*.†

Whatever be the principle on which the admissibility of these confessions was founded, and however exceptionable it may appear to those who are familiar with the system of rigorous exclusion now prevalent in our courts, yet Raleigh and others, who suffered under the operation of this rule, cannot, in this respect, be regarded as the victims of unwonted hardship, unknown to the law in the case of ordinary offenders. Staundford, who wrote his book long before, and Dalton, whose work on crown law was published many years after the trial of Raleigh, contain passages which give countenance to the same doctrine. Nor, indeed, was the admission of such evidence wholly at variance with principle, or unsupported by plausible reasoning. It was argued that they whose story inculpated themselves, could have no probable motive for inventing it; and that, the *whole* of it derived credit from this circumstance. The doctrine bears some analogy to that class of cases in which entries or declarations against interest are daily admitted as evidence *inter*

* See also the passage in Hale's H. P. C., vol. ii. p. 234.

† See these modes of torture described in the note, *Crim. Trials*, p. 22. It appears that the commissioners, &c. were always specially enjoined to handle their instruments "in as charitable a manner as might be," (p. 15), and to begin by "using the gentler torture first, *et sic per gradus ad ima*!" (p. 16, 17.)

alios, although the *alii* against whom they are offered have neither the advantage of cross-examination, nor the security of an oath. It is clear, however, that so long as the party whose confession implicated the defendant continued within the power of the prosecutor, and might have been produced in court, his written testimony was entitled to little credit; and the reason assigned by the judges for refusing to hear him in person, viz. that "*he might retract what he had formerly said*,"* was precisely the very reason why his personal presence ought to have been required.

In reading the trials in the volume under review, there is one peculiarity in the course of evidence, which (contrary to its ordinary tendency) seems to offer an advantage to the prisoner not enjoyed by a defendant according to the present practice. The case on the part of the prosecution is usually opened, and the proofs are produced, piece-meal; and the defendant is permitted to reply to each head of charge, and to comment upon the proofs separately, before his memory becomes distracted by the multiplicity of the matters adduced against him. It is, perhaps, not quite clear that this course is an eligible one on general grounds, or likely to be always beneficial to the party accused; but it is certain that it was conceded by the court as an indulgence, and as such was solicited and received by the prisoner.

We conclude this sketch of criminal procedure, as developed in the volume before us, by extracting from the Journals of the House of Commons part of a curious document, disclosing the practice of the Scotch courts in the reign of James I., which reflects some light on the contemporary usages of both countries in criminal cases. The entry on the Journals bears date the 4th June, 1607.

"In Scotland criminal causes are not governed by the civil law, but *ordanes* (?) and juries pass upon life and death, very near according to the law here (i. e. in England), which jury being chosen out of the four halves about, i. e. out of all places round about that are nearest to that part where the fact was committed, the law doth presume that the jury may the better discern of the truth of the fact by their own knowledge; and therefore are they not bound to examine any witnesses, except out of their own disposition they shall please to examine them, in favour of the party pursuer, which is likewise very seldom, or almost never used; but not lawful to be done in favour of the defendant.

"It is of truth that the judge may, either privately beforehand examine *ex officio* such witnesses, as either the party pursuer will offer unto him, or such others as in his own judgment he thinks may best inform him of the truth; and then, when as the jury is publicly called and admitted, he will cause these depositions to be produced and read; and likewise, if the party pursuer desire, then any witnesses there present to

* Crim. Trials, p. 427.

be examined, he will publicly do it, in presence of the jury, and both parties; but never in the defendant's favour, &c.

"So to conclude, to admit witnesses, especially in favour of the party defendant, and in criminal causes, is against the English law, the Scotch law, the civil law, and the law of all nations," &c.—1 *Comm. Journ.* p. 378.

We shall forbear to examine in detail the proceedings on the several trials reported in this collection, although many reflections suggest themselves on the perusal; but we refer the reader to the judicious observations and notes of the editor, which will be found to accompany each case. The most cursory glance at them will convince him, that regularity of procedure (according to the present notions of that term) was utterly unknown to all parties at the period in question. The trials present a scene of continual altercation between judges, commissioners, counsel, and culprit, in which it is difficult to say who is most contributory to the confusion. The acquittal of Sir Nicholas Throckmorton, whose trial stands first in the series, is nearly a solitary instance of the escape of a state offender; and his case is, in this respect, the more remarkable, as "there is little doubt," according to Mr. Jardine, "that he was deeply engaged in the conspiracy," with which he was charged.* His acquittal seems chiefly due to the extraordinary address and ability displayed by him in the progress of the cause, seconded, doubtless, by a strong sympathy with the sentiments he was known to entertain on the subject of the queen's Spanish alliance. In the course of the trial, the declarations of a person of the name of Fitzwilliams became the subject of hearsay evidence; upon which Fitzwilliams, who was present in court, offered himself as a witness on behalf of the defendant, to disprove the language imputed to him. It is hardly necessary to say, that this tender of voluntary testimony against the crown, seems to have been received with the indignation due to such an audacious and unheard-of proposal. The court sharply rebuked him for "a busy fellow," and forthwith ordered him "to go his ways" about his business.† Fitzwilliams was, indeed, fortunate in having incurred no heavier penalty by his officious benevolence than that of simple elimination. Dalton tells us an anecdote of a witness, who attempted a pious fraud on a similar occasion, for which he got more roughly handled. "Popham, Ch. J., at Cambridge assizes, *tempore* Elizabeth, committed one to prison who, upon the trial of a felon, called out that he could give evidence for the queen, and when he was sworn, he gave evidence to acquit the offender."‡

The heavy fines imposed on the jurors who acquitted Throck-

* *Crim. Trials*, p. 55.

† *Ibid.* p. 87.

‡ *Dalt. J. P.*, chap. 165.

morton,* are the subject of some comments at the end of the report, which we merely notice for the purpose of adverting to a passage in Hawkins's Crown Law, apparently adopted with approbation by the author, who tells us, that juries "persisting in a verdict contrary to the direction of the court *in matters of law*, are still liable to be fined."† The case, hypothetically put by Hawkins,‡ of a jury specially finding the facts and then giving a general verdict contrary to such finding, is hardly intelligible, and is certainly so improbable, that it is not worth discussion. But the general proposition, broadly stated as above, is not only at variance with the opinion of Sir M. Hale,§ but with the more venerable authority of Littleton and his commentator, from whom we learn, that "where the inquest may give their verdict at large, *if they will take upon them the knowledge of the law upon the matter*, they may give their verdict generally."||

The functions of juries, and the extent of their legal responsibility, whatever doubts may have formerly prevailed, have been put on so clear and satisfactory a footing by the judgment of the court in Bushell's case, that there is little probability of any future question arising upon the subject. A general verdict is in the nature of a *judicial act*. In some cases the law provides means to rectify manifest error; but in no case, within recent times, have the courts exercised, or claimed to exercise, a right to impose any penalty on the jurors who concurred in it. As long as they are acting honestly within the limits of their jurisdiction, juries are protected by the same immunities which belong to other judicial characters; and however erroneous or absurd their verdict may be, we can see no sound principle to justify punishment, unless it can be distinctly traced to corrupt motives, or improper practice, or a total disregard of their deliberative duties.¶¶

The case of the Duke of Norfolk, besides the usual routine of hearsay evidence and extorted confessions, contains another singular example of irregularity. The solicitor-general alludes to a certain disclosure made through the medium of a foreign ambassador to the Privy Council, and "not meet to be uttered in open presence;" and for the particulars of it he refers the peers, by whom the duke was tried, to those among them who were members of the council.** A species of evidence so manifestly unfair, according to modern ideas of justice, seems to have produced no

* "Not so few as forty juries have been punished in this court for perjury in their verdicts within fifty years." Hudson, Treat. of Starchamber, p. 153.

† Crim. Trials, p. 118.

‡ 2 Hawk. ch. 22, § 21.

§ Ibid. 2 Hale, P. C., ch. 22 and 42.

|| Litt. § 368. Co. Lit. 228, a.

¶¶ Bribery; the reception of private evidence from the parties; deciding the verdict by tossing up, &c. are examples of misconduct justifying punishment. The remedy by *attaint* being obsolete and inapplicable to criminal cases, is not worth mentioning here.

** Crim. Trials, p. 210-11.

remonstrance on the part of the prisoner; nor, indeed, was it much at variance with the usage among jurors at a time when they were permitted to ground their verdict on private information communicated from one to the other. In the case of Graves and Short,* one of the jury in a civil cause, on withdrawing from the bar, produced to his companions a piece of documentary evidence out of his own private possession. This was objected to in the court above; but they affirmed that "he might show them anything which he knew," or produce to them any evidence "he had about him before," provided it did not appear to be furnished to him by one of the parties. Sir Matthew Hale, indeed, calls such conduct "a fineable misdemeanour" (2 H. P. C.); but this is clearly a doctrine of much later origin, and is not warranted by the authority which he cites.

The duke's participation in the Rudolphi conspiracy, which made part of the charge against him, though not established by any proof that could be deemed satisfactory at the present day, is, perhaps, the only part that could warrant the prosecution. The address of Wilbraham, attorney-general of the wards, on the part of the crown, is able and spirited, and has the good fortune to be remarkably well reported.

The trials of the accomplished Essex and the famous Raleigh close the series. The former is one of those cases in which a seditious riot was converted into a constructive treason, and it has, accordingly, been the subject of frequent criticism and comment among the writers on criminal law. That Essex was at least guilty of a *high misdemeanour* cannot admit of a doubt; but there is reason to believe that the peers who tried him were reluctantly induced to convict him of *high treason*. "I have heard," says Hudson, "that Henry, Earl of Lincoln, in a private discourse said that the Earl of Essex's insurrection in London was but a rout, but that he durst not but find it treason."†

The trial of Raleigh is already familiar to most readers; but the report of it in this collection is far more full and satisfactory than any previous account. The letters and minutes which compose the sequel to the trial will be read with deep interest.

In concluding our notice of the contents of this volume, we shall pick out and present to the reader a few choice flowers from the characteristic oratory of Sir Edward Coke, who exercised the office of attorney-general on the occasion of the two last trials, with little credit to his moral character, and but slender accession to his professional reputation.

On the prosecution of Essex, Sir Edward enforces the doctrine

* Reported Cro. Eliz. 616; 2 Rol. Ab. 715.

† Treat. of Starchamber, p. 85.

of constructive treason, by referring to the insurrection of the Kentish labourers on the alleged grievance of wages;—to the case of the London apprentices, in which a conspiracy to whip the lord-mayor was adjudged an overt act of compassing the queen's death;—and to the cases of Bradshaw, a miller, and Burton, a mason, who had conspired with others to throw down inclosures for the maintenance of tillage. Our learned attorney-general then proceeds, in manifest emulation of Cicero, to address the court in the following flight of elaborate eloquence:—

“ If then, labourers assembling together and devising to overthrow the laws respecting their wages;—if low apprentices, rising to resist the whipping of their fellows;—if millers and masons, poor mechanical persons, intending to overthrow inclosures, shall be said to be guilty of treason in devising the death and destruction of the king;—what shall we say when so many earls, barons, and knights, having assembled, on a sudden, three hundred or four hundred persons, and expecting a multitude of followers, in a settled government, do intend to take—*not* a slender fort, but the Tower of London! to invest—*not* a mean village, but this great city! to surprise—*not* the mansion of the lord-mayor, but the sacred palace of the queen! This must needs imply the death and destruction of the queen, and is higher than the highest treason! How much the possession of the Tower of London by any subject doth concern her majesty, your lordships may judge; yet the possession of the city, which she hath more affectionately loved and respected than any of her progenitors, doth much more nearly concern her. And though the surprising of her court, where her royal person is, in such manner as you shall hear, is, of all these attempts, the most dangerous; yet such is the godly care of her majesty for the good of her subjects, that the change of her blessed government by such a *Catiline, popish, dissolute, and desperate* company that should have despoiled and dishonoured her good, loyal, and rich subjects,—*this* should be more perilous to her than her own safety.” pp. 317–18.

It is observable, that the choice and collocation of the epithets in italic appear, from the MS. copy of the speech still extant, to have given infinite trouble to the learned composer, who has evidently erased, altered, and re-written them five or six times over.

The following passages are extracted from the opening speech of the same attorney-general on the trial of Sir Walter Raleigh. The address in this case, as in the last, is obviously a laboured composition, and was doubtless intended to exhibit a felicitous union of argute and discriminative rhetoric, with the profoundest learning and the most impressive eloquence. The exordium, in which he apologizes for the irreverent mention of “*kings and tetrarchs,*” is calculated, we suppose, “to beget an awful attention” in the audience.

“ Before I enter into this cause, my lords, I must take this caution,

that in the narration of these treasons, we of the king's council must often make mention of potentates and persons of great place; yet it is not we who do this of our own heads; for we, professing the law, must speak reverently of kings and great men; we only repeat what the Lord Cobham and Sir Walter Raleigh have said respecting them. This great and honourable assembly doth look to hear this day, what before hath been carried on the rack of scattering reports; and we shall now, by evidence, make a plain discovery to you of as great and secret, but as foul, treasons as ever were imagined. Towards these offenders there hath been done nothing rigorously—nothing unnaturally—nothing precipitately: not rigorously, because no torture hath been used; not unnaturally, because the brother was not pressed (further than he would) to accuse the brother; not precipitately, because of the long time his gracious majesty hath premised before he would bring them to their arraignment.

“Unto all great mischiefs there be ever three inseparable incidents: the first is imitation; the second, supportation; the third is defence; within these three fall all Sir Walter Raleigh's treasons; for his is the treason of the *main*, the others were the *bye*, &c.

Your lordships will see that all these treasons, though they consisted of several points, closed in together, like Sampson's foxes, which were joined in the tails, though their heads were severed. But the Lord Grey went further than the *bye*; for at the king's removal from Greenwich, at Midsummer, he and a hundred gentlemen were to pretend exhibiting a *petition*, but, in fact, they intended *perdition*, namely, to surprise the king; but fearing the papist's party was too strong for him, he determined to stay till he had gotten forces intended him from the Low Countries. You will observe, my lords, that in these treasons, they had procured a jargon, a watchword;—in pretence, *bonum in se*, the king's safety, but in intent, *malum in se*, the king's destruction. This, by way of imitation, is the common trick of all traitors; and you will find that in the tragedies of all the treasons that have hitherto been enacted, there hath always been a cruel and bloody catastrophe, one thing having being pretended and another accomplished!

“Now, my masters of the jury, I come to your charge: treason is of four kinds, treason *in corde*, which is the root of the tree; treason *in ore*, which is the bud; treason *in manu*, which is the blossom: and treason *in consummatione*, which is the fruit. In the case in hand, you shall find the three first of these; these traitors being prevented before the consummation of their mischiefs; but though prevented, they are still traitors *in corde*, *in ore*, *et in manu*, and though their practices have been secret, they are still treasons. But this case exceedeth in wickedness all that ever went before, in two things, *in determinatione finis et in electione mediorum*. For it was said by these traitors, that ‘there would be no safety in England until the fox and his cubs were taken away,’ meaning, until the king and all his royal issue should be destroyed. Therefore in this treason the mischief exceeds the punishment and the terms of law; for this is not only *crimen læsæ majestatis*, but *extirpatæ majestatis*

et totius progeniei suæ : for not only the king, but all his posterity were to be cut off! I shall not need, my lords, to speak any thing concerning the king, nor of the bounty and sweetness of his nature ; whose thoughts are innocent ! whose words are full of wisdom and learning ! and whose works are full of honour !” pp. 402-6.

ART. IX.—*The Dogmas of the Constitution. Four Lectures, being the 1st., 10th., 11th., and 13th., of a Course on the Practice and Theory of the Constitution, delivered at King's College, London, in the Commencement Term of that Institution.* By J. J. Park, Esq., Barrister at Law, and Professor of English Law and Jurisprudence. 8vo. London. B. Fellowes, 1832.

Professor Park, the “promoter of the nascent school of inductive politics, or observational political science,” as he terms himself, has made, according to his own account, a great discovery, which he has promulgated to the world in a work bearing the above striking title. He has discovered that every body, but himself and Lord Dudley, has totally mistaken the nature and genius of the English constitution, the excellence of which consists in the existence of a corrupt House of Commons. This is the whole scope and aim of the four lectures before us.

Previously to our examining the merits of the professor's discovery, let us say a few words as to the object of the publication. In various parts of it Mr. Park disclaims all approach to party spirit. He tells us that he is neither “Whig nor Tory,” “neither Reformer nor Anti-reformer.” That by Whigs he has been called a Tory, by Tories a Whig ; “perhaps the best proof that he is independent of *either*.” Above all, he is anxious to assure his readers that he was a decided enemy of the Castlereagh administration. When we read these disclaimers we at once suspected the truth of the case, and we were prepared for what “the Dogmas” soon appeared to be—a pamphlet against reform. We have no objection to Professor Park writing against reform—on the contrary, we should be sorry to see him array himself under the banners of its supporters—but we do object to his permitting himself, in his responsible character of lecturer to a great public institution, to become the organ of a party—the preacher of party politics.

How does the case stand? Mr. Park is appointed Professor of English Law and Jurisprudence at King's College. He delivers a course of thirteen lectures on the Theory and Practice of the Constitution. During the progress of it, he takes what he con-

ceives to be a novel and ingenious view of the constitution, and that view is in direct opposition to the opinions of those who regard a reform in the representation of the people as necessary. Now it happens that this question was treated of by the learned professor in different lectures in different parts of his course. Dragging them then from their companions, the first, tenth, eleventh, and thirteenth lectures are now stitched together in the form of a pamphlet, which might, with propriety, have borne the title of "*a Contre projet to the Reform Bill*," but which ought not to have been presented to the world, as containing the deliberate opinions of a Professor of Jurisprudence. We are told that the lectures "are made public at the urgent desire of several of those who heard them." The "urgent desire" is easily understood; but if any doubt could exist, that the "Dogmas" are a mere party publication, it would speedily be removed by the following modest little announcement at the end of the work:

"In conclusion of these hasty remarks, snatched from far other cares, I beg to suggest to those, who entertain the same views of this momentous subject as myself, the following as a *form of declaration*, in which the peculiar grounds of their opposedness to the Reform Bill might be distinctly recorded."

What are we to think, after this, of the professor's candour, when he declares, that "neither Reformer nor *Anti-reformer* would define his school of politics?" Pref., p. xvi. What are we to think, after this, of the sincerity displayed in the following passage?

"Gentlemen, I am not going to argue either *for or against* the Reform Bill: first, because I do not yet know, certainly, any more than any body else, what the effect of that bill will be upon the real or practical constitution of this country, as distinguished from the non-existent theoretic one; secondly, because I should, probably, have no common language with either the opposers or maintainers of it; and, thirdly, because I do not choose to incur the imputation of making this College a place for the agitation of party politics."

Now this is admirable.—The professor is not going to argue at all about the Reform Bill, and yet the whole of his tract is directed to that subject, and to that only.—How, if he "was not going to argue [and did not argue] either for or against the Reform Bill," how could he ask the persons (as he does at the conclusion of his pamphlet), "*who entertain the same views of this momentous question as himself*," to sign a declaration, "in which the peculiar grounds of their *opposedness to the Reform Bill* might be distinctly stated?" Let it be remembered, too, that he promulgates this declaration after a confession that he does "not know what the effect of the bill will be:" so without being able to form any opinion as to the effect of the measure, he thinks fit not only

record his own opposition to it, but to ask other persons to do the like. With the professor's second objection to meddling with the matter of reform we perfectly agree; for we fully believe that, perhaps, with the exception of Sir C. Wetherell, he has no common language with either the opposers or maintainers of the measure. But Mr. Park does not "choose to incur the imputation of making the College a place for the agitation of party politics." Has he then the perfect simplicity to believe that any one can read his "Dogmas," and not at once perceive that Professor Park has become the pamphleteer of a faction?

The professor's new view of the constitution is exhibited in the following passage :

"I intend, therefore, when I come to the rationale of the constitution, to treat of it upon the basis of its *realities* : namely, that for the last 150 years at least, there have been two concurrent, but essentially different, constitutions existing in this country, though without any EXPRESS recognition of the fact; the one in substance, the other in form only; that during all that period the powers of government, which were previously carried on by force of the prerogative, have been essentially and substantially exercised and carried on in the House of Commons, as the great public council, and thence in the face of the country, which has thus come to take a part, and exercise a voice in every act of the cabinet; that as a necessary condition to the concurrent preservation of the *theoretic* constitution, in which the supreme power is supposed to reside, in the three co-equal elements of the crown, the aristocracy, and the commonalty, each of these elements has come to be represented (by whatever means that were effected, and it is no part of my business to defend the means), in the Commons House of Parliament, in which the supreme power had concentrated; and that, as a consequence, collision between these several elements *out of the House*, has no longer happened, except on extraordinary occasions, because their battles have been fought, and their trials of strength made *in the House*." p. 7.

That this representation of the "co-equal elements of the crown and aristocracy" in the House of Commons, is considered by Mr. Park to be the grand feature of the English constitution, appears from his preface, in which he says,

"If we were not now in actual peril from the results, it would be surpassingly ludicrous that book-makers in succession should have expended their strength in lauding the practical excellence of a constitution which had attained whatever it did possess of *practical excellence*, precisely by a total departure from that theory of action to which they dotingly attributed it. And yet Montesquieu, Blackstone, and De Lolme are the books which statesmen themselves have applauded, and recommended to the rising generation. *Quos Deus vult perdere prius dementat.*" p. xiii.

Thus we learn that whatever the constitution possesses of practical excellence it derives from the representation of the crown and

of the aristocracy in the House of Commons. This is the doctrine which the expounder of English law in King's College, London, has thought fit to promulgate for the benefit of his disciples. Not meeting with similar views in the works of previous writers, he does not hesitate to attribute fatuity to those by whom such works are recommended, forgetting how easily the *prius dementat* may be applied to himself. He is surprised (we are not), that no one but Lord Dudley, should have "made an approximation" to this "actual verity," during the late debates on the subject of the Reform Bill; and he evidently conceives himself to be the first writer on the constitution, who has given anything like a true exposition of its theory. Does the learned professor really imagine, that he is the only person who has pointed out the system of *influence* under which the government of this country has been so long conducted? Why, there is not a single writer, who has ever put pen to paper within the last century, on the subject of the constitution, who has not called the attention of his readers to the fact. In one respect, indeed, Mr. Park differs from his predecessors, when he converts that which is an abuse of the constitution into a component principle of the constitution itself.

With an assumption of historical learning (of which his readers will judge), Mr. Park tells them that he shall "proceed at once to the historical details which belong to this part of the subject, in order to show how, at the various periods of our constitution, the government has been carried on—what share in it the legislature has enjoyed—how that legislature has originated—and how it has arrived at its present position." These "historical details" consist of a few bald extracts from Mr. Palgrave and Sir James Mackintosh, referring solely to the origin of the House of Commons; not a word is said of the period when the crown and the peers began to create an interest in that assembly; not an authority is cited to show that such an interest was ever recognized; and so far from tracing the manner in which "the legislature arrived at its present position," the professor wisely takes leave of his subject in the reign of Henry III. We should observe, that this forms the conclusion of the eleventh lecture, and is followed by the thirteenth. What is contained in the twelfth we have no opportunity of knowing. Perhaps it makes the whole affair very clear.

The advantages supposed by Mr. Park to be derived from the influence of the crown and the aristocracy are two: first, that adequate power is secured to the government, "to conduct the civil administration of the country, according to the best and most enlightened opinions, even in opposition to popular or superficial notions prevalent at the time amongst the community;" and secondly, that it secures "the political government and civil administration of the country to the most talented men of the great

parties, into which this country has long been divided." The latter idea he again expresses in the following sentence:—"For the many to choose their own statesmen, is as absurd as for school-boys to choose their own schoolmaster. This seems to prove the necessity of a permanent aristocracy of talent; not *self-elected*, but *self-electing*."

The vagueness of Mr. Park's reasoning renders it exceedingly difficult to discover what is the precise nature of that scheme of government, with the excellence of which he is so much enamoured. What degree of influence are the crown and the aristocracy to possess in the House of Commons? Are a majority or a minority of the seats to be filled by the nominees of government and of the lords? From the language used by the professor, in the form of declaration, given for the benefit of the Anti-reformers, at the conclusion of his lectures, it would seem that the crown ought to name a majority of the Commons: "that usage" (of "carrying on the administrative government of the country in parliament") "necessarily depends, for its practicability, upon a *moderate preponderance* of the influence of the crown in the houses of parliament, so as to preserve the government there carried on from factious intrigue, and daily and capricious opposition, and to preserve that opposition for occasions of real misconduct or misjudgment."

Now we cannot but admire this scheme of government. The crown is to possess "a moderate preponderance" of influence in the House of Commons, that is to say, such an influence as will enable its ministers to carry such measures as they may deem proper, by the voices of their own nominees. Let it be granted, that the government will be thus preserved from intrigue and capricious opposition; yet what remedy is there against that government in cases of misconduct or misjudgment? It matters not how *moderate* the *preponderance* is: if the influence of the crown preponderates at all, it will carry ministers through evil as well as through good. What is there to prevent a wicked administration from filling their seats with their own profligate retainers, anxious to uphold them in every scheme of public villany? Whence is the "opposition to real misconduct or misjudgment" to proceed? Who are the judges of those delinquencies?—the members of that House, in which the influence of the delinquents themselves *moderately preponderates*. Is it not an insult to the understanding of any man, to request him to sign such "grounds of opposedness" as these?

"But," says the professor, "my scheme of constitution is the only one that can give stability to government." It does, indeed, confer that stability which consists in irresponsibility. Who is to oppose the acts of a minister, ever confident of a majority in the

House of Commons? What remedy does such a scheme of government leave to the people? With no constitutional means of opposition afforded them, they must, and they will, when the burthen becomes heavy enough, find their own method of redress. This is what Professor Park calls "preventing a collision."

Let us now consider whether the system of corruption insures that ascendancy to talent which Mr. Park attributes to it. This argument, like his others, is scattered through his lectures in various places. At p. 37, he introduces it with the following startling assertion:—"One man *can* do that which another man *cannot* do; and that is the whole matter.—Any system, then, of government, which should not adequately provide for this superiority or ascendancy of gifted individuals, by conferring upon them adequate power to give effect to their own talents in the administration of the *scientific* part of government, would overlook the conditions under which all other sciences are carried on, and which are essential to their prosperity." In another place, the professor again urges the argument in favour of the men of talents. "The practical machinery of our constitution may be described as a very successful, and highly organized system, for securing the political government and civil administration of this country to the most talented men of the great parties into which this country has been long divided." We are at a loss to discover in what manner this follows, from the "very successful and highly organized system" in question; nor do we derive any information on the subject from Mr. Park, who has thought it sufficient to state the simple fact. The experience we have would certainly lead to a different conclusion. It is sufficient to remember, "the successful and highly organized system" prevailing in our close corporations, where "not self-elected, but self-electing," aldermen display their "scientific profundity," to feel convinced that a minister, who has lost the salutary dread of a majority against him, will pay little regard to the *talents* of those whom he selects as his colleagues.

Again, is it a necessary consequence of the corrupt system, that the purchasers of seats in the House of Commons should be men of talents? In one passage Mr. Park seems to admit, that very useless persons may find access by means of their wealth:

"Some proverb-maker, I forget who, says, 'God hath given to some men wisdom and understanding, and to others, the art of playing on the fiddle.'

"In this primary and important truth, a truth wholly overlooked by the inventors of the accredited theory of our constitution—a theory which supposes all legislation and all legislators equally good—which supposes Signor Paganini, should he choose to lay out some of his earnings in a naturalisation act and a seat in parliament, as competent to

lead the House of Commons, as to lead the orchestra of the Opera House," &c. &c.

We are not acquainted with any theory which supposes that Signor Paganini, by laying out some of his earnings, could procure a seat in parliament; but we are acquainted with the statute of 12 Will. III. c. 2., which renders naturalized foreigners incapable of sitting in parliament. Why should the Professor of Jurisprudence, even in his pleasantry, beguile his young hearers in this manner?

We should be extremely ungrateful to Mr. Park, did we not express our obligations to him for the amusement we have occasionally derived from the perusal of his book. A figure of speech, like that at the conclusion of the following passage (which, let it be remembered, is only one sentence), amply repaid us for all our labours.

"Those whose habits of life and habits of reading make them conversant principally with the overt or secret acts of political corruption—those whose attention is mainly drawn to the failure of the legislature, as now constituted, to secure the public against pension lists and sinecures—those who look only at what they have been *taught* to consider as the theory of the constitution, and contemplate the practical departures from it as so many frauds upon it—and those who have tutored themselves to believe that public opinion, as it is called, or as some one has well defined it, 'an opinion formed without the evidence,' is as capable of directing the complicated affairs of this vast empire, as the highest grades of individual talent, and the most profound information—all such persons array themselves boldly, fearlessly, and honestly, on the side of popular politics, and form that dense mass, which, while the vessel of the state is lying gunwale to, and creaking and cracking in every spar, under such an administration, as some of us recollect, by throwing their whole weight on the weather-bulwarks and gangways, prevent her from going fairly over on her lee-beams into the abyss of virtual despotism, under the forms of a free government; but who, when she has suddenly righted, and got a *weather* lurch, do, by retaining their position, without advert-
ing to the change of danger, threaten her with a peril equally imminent, that of pitching and going down."

The "vessel of the state," is a favourite metaphor with the professor, which, in conformity with the rule laid down by Martinus Scriblerus in his celebrated treatise, he is "sure to run down and to pursue as far as it can go." Thus, at the conclusion of the "declaration," which he recommends to those who "entertain the same views as himself," we find the same image:

"Because, although it is true that men are less disposed to complain of mischief done with their own help and concurrence, than of mischief done in opposition to their advice; it will, in point of fact, be equally fatal, whether the vessel of the state goes over on the larboard or on the

starboard beam; and if the ballast has been all gradually shifted a-weather, while the vessel was on the one tack, and she is suddenly brought up and laid on the other, without rearranging the ballast, it will be obvious to every seaman, that she must be but too liable to capsize." p. 150.

And did Professor Park, in good truth, expect that any one person would "distinctly record his opposedness to the Reform Bill," by subscribing his name to this naval nonsense? To what place, we would ask, has his own ballast shifted? Without doubt, the professor must at one time or other have been even more completely at sea than he now is on the subject of the constitution. We could produce from the pages before us, abundance of marine metaphors, almost equal to the foregoing. Thus, "it is as easy for the press to *victimise*, as it is called, as it is for a steamer to run down a wherry,"—"like the wretches who leap from the burning deck to find a grave in the yawning deep below," &c. &c. But it must not be supposed that the ocean is the only source of Mr. Park's imagery—the science of medicine has furnished him with some striking similes, as in the following high-wrought passage:—

"If we could succeed in resolving ourselves into pure abstractions, and look down upon the civil affairs of this nether world, as if we were inhabitants of another planet, in which political animosities were unknown, we might arrive at a very few simple postulates, which should wonderfully enable us to thread the *mazes* of political contrariety, and look over the constitutional history of our country with the masterful eye of a skilful physician, regarding the alternating ailments of a patient, in whom contending morbid principles were at work, and referring all the fluctuating phenomena, without perplexity, to their concealed, but not unknown causes." p. 87.—Again, reform is "only an exchange of one great evil for another; like the substitution in medicine of one diathesis, equally dangerous or fatal, for an opposite one which is removed." p. 148

The mathematics also furnish our professor with some sublime imagery:

"There are cycles or periods in most things connected with human affairs, within which the tendency of moral or political evil is almost constantly in one direction. The line of projection is not a 'zig-zag,' but a continued diagonal—or, perhaps, is still more like the peculiar inflection known to seamen," [again on the ocean] "by the denomination of 'lee way,' requiring a continued correction of the ship's reckoning to keep her in the desired course. Evil may, in this view, be considered as lateral pressure," &c. &c.

"I doubt not," says the excellent Scriblerus, "I doubt not but the reader, by this cloud of examples, begins to be convinced of the truth of our assertion, that the Bathos is an *art*, and that the genius of no mortal whatever, following the mere ideas of nature,

and unassisted with an habitual, nay, laborious peculiarity of thinking, could arrive at images so wonderfully unaccountable."

Such an admirer of the grand style is Professor Park, that when he meets with a passage remarkable for being *profound*, he forthwith transfers it to his own pages, as in the following extract from the *Eclectic Review*, equally striking for its profundity and its grammar:—

"It is a wise remark of Rousseau," says Mr. Park, "cited in the valuable little tract on the Rights of Industry, which has recently appeared, that it requires a great deal of philosophy to observe what is seen every day. My own impression is, that it is the rarest of all philosophy, while [now comes the honoured extract] the greatest of all fallacies are those abstract propositions, involving imaginary conditions to which nothing actual really corresponds, and which, unlike a general fact (which is true on the average, and, therefore, in a majority of particular facts), is true of no particular case, is never realized." p. 30.

Our readers will regret to learn that Professor Park has received *private* information that the constitution of the United States is in a course of rapid decay.—"Those who know privately (as I happen to do) what is now going on in America at this very time, in spite of all her appearance of prosperity, and that congress is fast verging to a state, which their own wisest publicists, when they dare to speak out, predict as the inevitable destruction of that prosperity," &c. &c. There is something inexpressibly amusing in the solemn air of confidence with which Mr. Park makes these prophecies. "Those," he says in a note, "who have no *more confidential sources of information*, are referred for abundant materials upon this point to the article on Legislation, in the 4th number of the *American Jurist*." Has the president betrayed the secrets of the Union?

Though not attached to the constitution of the United States, the professor is not unwilling to use the language of our Transatlantic brethren. In reading some passages of his lectures, we could almost believe him to be an "American Jurist" himself. "Gentlemen," says he, "is it possible to give an ontological definition of legislative function? To put this to the test, we must make this inquiry:—Suppose the whole power of law-making and of ruling to be vested in one individual, and not distributed amongst different estates of the realm, can we still distinguish between acts or functions which are legislative, and acts or functions which are *governmental* or politic only?" This is not, however, *quite* the finest word which the Dictionary of Americanisms furnishes—*gubernatorial* has a nobler sound with it.—Another instance of Mr. Park's verbal grandeur occurs in the following passage:—"Those, on the other hand, whose position in life, actual expe-

rience, or habits of thought and reading, have led them principally to *preponderate* the mischiefs of unsettled government," &c.*

We hope, upon some future occasion, to do ourselves the pleasure of noticing the professor's Lectures on Law.

ART. X.—SHORT REVIEWS OF BOOKS.

1. *The Eighth Report of the Committee of the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders. With an Appendix.*—8vo. J. and J. Arch. London, 1832.—pp. 98. Appendix, 320.

We regret to find that the funds of this most excellent institution are in such a state that, unless speedily recruited, the labours of the committee must be discontinued. Should such an event become necessary, from such a cause, it would be truly disgraceful to the country. But we cannot bring ourselves to believe that one of the most useful of our charitable institutions will be thus suffered to decay for want of pecuniary support.

The present report is full of information, and in many respects highly creditable to the committee, presenting a succinct account not only of the state of prison discipline in the United Kingdom, but also on the Continent and in the United States of America. It is satisfactory to find that improvements are gradually taking place, not only in the construction of new gaols, but in the discipline of the old prisons, and that an opinion in favour of a reformatory system is gaining ground.

In practice little has yet been done in England towards the establishment of an effective system of prison discipline, and we regret that the committee of this society have not, after due inquiry, recommended some specific plan for that purpose. It is much to be lamented also that they should not be able to suggest any other improvement in the Milbank Penitentiary, than the lengthening the time of working at the tread-mills, and the introduction of tread-wheel labour in solitary divisions. Even the very imperfect system adopted at Milbank has yet produced its fruits ;

* "GOVERNMENTAL.—A reviewer in the Monthly Anthology (vol. vii. p. 263), ranks this among the 'barbarisms in common use' in America. It is not in any of the dictionaries, and I did not suppose it had ever been used by any English author. But I find it has been by Mr. Belsham, in his *Memoirs of George III.* It is, however, (with the words *liberticidal*, *royalism*, and some others), condemned by the Edinburgh reviewers, who observe, that these words 'are slight innovations upon the English language, which we cannot give up to this thirsty reformer, any more than the English constitution.'—*Edin. Rev.* vol. ii. p. 148." *Pickering's Vocabulary.*

for out of the prisoners discharged in 1829, 35 males and 12 females have received gratuities for one year's good conduct after quitting the Penitentiary.

One of the objects of this society, the reformation of juvenile members, is deserving of the highest commendation. The Temporary Refuge for these unfortunate young creatures has been found of most essential service in rescuing numbers from a life of crime and misery. The following instances attest its beneficial effects :—

"D. C. aged fifteen. His father was killed by an accident, and his mother deserting him, he fell into the company of young thieves, and during six years was constantly engaged in the commission of crime. He was eight times in prison. This lad was admitted into the Temporary Refuge, where he at first discovered much obstinacy and depravity, but at length he became gradually reformed, and for several months conducted himself in a very exemplary manner. He was then apprenticed to a master shoemaker, to whom he is giving much satisfaction.

"R. L. aged twenty-two, was brought up as a tailor, and conducted himself well till he met with bad associates ; in consequence he lost his employment. He then became a noted pickpocket, and was four times in prison. At length he applied for admission into the Temporary Refuge, where he soon saw the evil of his former habits, and resolved to abstain from them. His conduct being good during his stay, he was placed for two years with a respectable master, whom he served faithfully, and who, at the expiration of the term, gave him an excellent character.

"A. G. aged twenty-four. His parents are dead. For a short time he was servant to a gentleman ; but, having become acquainted with some desperate characters, he had recourse to their habits, and continued for more than eight years in the practice of crime. He was seven times in prison for various offences. During his last confinement, he heard of the Refuge, and on his release applied for admission. During his residence there his conduct was excellent ; and his example produced a beneficial influence on those around him. He became much respected ; and, after remaining two years in the institution, was placed for further instruction under a respectable shoemaker, who had himself been formerly in the Refuge. The young man is now conducting himself in a manner that renders him a valuable member of society."

We perfectly agree in the observation of the committee, that for this class of offenders it is much to be desired that a Reformatory could be established, since the discipline of an ordinary prison is by no means adapted for their reformation. At an early period we shall take an opportunity of recurring to this very important subject. The establishment of a separate system for the treatment of juvenile offenders has been attended with the best results in America. In New York it has reduced the number of such delinquents one half.

2. *An Inquiry into the Use and Abuse of Grand Juries, with Reference to their Adjudicating on Cases which have undergone previous Investigation before a Magistrate.* By Peter Laurie, Esq. B. C. L. London: Smith, Elder, and Co. 1832.

The subject of Mr. Laurie's pamphlet was, as our readers will probably recollect, examined at some length in a former number of the *Jurist*;* and it will therefore be unnecessary for us to notice in detail the arguments made use of in the "Inquiry" before us. The writer has taken the same view of the question as was presented in the article to which we have referred, but to which his attention does not appear to have been directed. Many of the facts and statements made by Mr. Laurie illustrate the subject in a very forcible manner, and to these we shall shortly refer. We stated that we had reason to believe that not a year passes in which great numbers of bills are not improperly thrown out solely in consequence of ignorance of law. Let our readers take the following as an instance, if not of ignorance, of something worse :

"The prisoner was committed for stealing a duck. The prosecutor was called in first, and asked whether he could swear to the duck. His reply was, that he could not. The jury did not call in two witnesses who were in attendance, and who had taken the duck from the prisoner, after having seen him steal it, but immediately ignored the bill." p. 25.

There is scarcely a person conversant with the proceedings at Quarter Sessions who could not furnish instances of extreme ignorance on the part of the grand jury. We have known a grand jury ignore a bill because they had nothing but the confession of the prisoner to proceed upon. But it is not on the ground of ignorance only that the institution is objectionable. The influence of improper motives must not be disregarded. In this country fortunately the tone of private and of public feeling is such, that unless when the interests of the class from which grand juries are selected, or some matter of political feeling should come in question, the decisions of the jury are seldom biassed by improper motives. But where there is scope for the operation of such motives, what has been the case? Can an instance be given of grosser injustice than was perpetrated in the following instance, through the instrumentality of a grand jury? In the Island of Nevis, the Council for the Protection of Slaves having investigated the conduct of the manager of an estate, six indictments were preferred against him, one for murder, two for manslaughter, and three for mal-treatment. The grand jury ignored all the bills, and the proceedings being laid before Lord Goderich, drew from him the following obser-

* Vol. I. p. 190.

vations, which mark pretty clearly the opinion entertained by his lordship with regard to the conduct of the grand jury:

“The rejection by the grand jury of Nevis of the bills of indictment preferred in some cases of alleged cruelty against slaves on different plantations, when viewed with reference to the previous depositions, has unavoidably produced in my mind the painful conviction, *that the gentlemen of the Colony have not understood their duty as grand jurors.* I cannot permit myself to believe that persons, in their station of life, would be insensible to the sacred obligation of the oath they have taken; and though I am not disposed to attribute to them such prejudices as would prevent the dispassionate exercise of their judgments in questions of such serious moment, I cannot but feel that the course they have pursued in this matter is calculated to produce a very painful and unsatisfactory impression in this country.”*

The culpable haste with which grand juries frequently discharge their functions is a proof at once of their inutility and of their unfitness. “At the September sessions, 182—,” says Mr. Laurie, “the grand jury for Middlesex disposed of six hundred bills in six days; and it is not very long since, a clerk of the arraigns on the midland circuit hinted to a learned judge, who was complaining of delay in the grand jury, that bills were sent in quite as fast as he could register them, as they had just found sixteen bills in fifteen minutes.” p. 13.

The exclusion of the public from the proceedings of grand juries, and the absence of the depositions taken before the committing magistrate, form a serious objection to the present system, and have been well remarked upon by Mr. Laurie. These circumstances afford a much better opportunity of tampering with the witnesses than can ever occur in open court, where the scrutiny of the public, and a perpetual reference to the depositions on the part of the judge, are a safeguard against perjury.

“About three years ago, a man who had been known to the police many years, but who never risked his liberty for a small prize, called a few times at a public-house in London-house Yard, St. Paul’s Church-yard. One day when he called, he was, at his request, shown into a private room behind the bar. In this room was a cupboard, in which the landlord had about 60*l.* *This money was safe before the prisoner entered the room, and was missed within five minutes after he quitted it, and before any other person had been admitted to it.* Heavy bail was offered for the prisoner when he came before the magistrate, but it was refused, because the facts were deemed too clear to permit that course. It is notorious, that before the trial, a handsome offer was made to the landlord to withhold part of his evidence, according to his admission, but he rejected it. However, when the case came before the grand

* *Jeremias’ Essays on Colonial Slavery*, p. 26.

jury, the bill was thrown out, and there was no doubt among those who were acquainted with the facts of the case, that there had been some wilful suppression or perversion of the circumstances." p. 26.

A still stronger instance is given by Mr. Lauriè of a prosecution being defeated by bribing two police officers, who so adroitly managed the case before the grand jury, that the bill was ignored.

Where the merits of a question are so doubtful as are those of the grand jury system, *expence* is a consideration which ought not to be overlooked. In London and Middlesex the additional expence caused by an attendance of the witnesses before the grand jury is comparatively trifling, though even there it has been made the subject of complaint. But in the great northern counties, where the witnesses have to travel from fifty to one hundred miles, and where the assizes last, occasionally, longer than a fortnight, the necessity of attending at the very commencement of the assizes is productive of vast cost to the county.

Mr. Laurie's Inquiry will, we hope, be the means of calling public attention to a subject which is well deserving of consideration. The style of the pamphlet is occasionally rather ambitious, but, upon the whole, it is a very sensible and creditable little work.

3. *Exposition of the Practical Operation of the Judicial and Revenue Systems of India, and of the general Character and Condition of its native Inhabitants ; as submitted in Evidence to the Authorities in England ; with Notes and Illustrations. Also a brief preliminary Sketch of the Ancient and Modern Boundaries, and of the History of that Country ; elucidated by a Map.* By Rajah Rammohun Roy. London: Smith, Elder, and Co., Cornhill, 1832. pp. 130.

The very title-page of this book is almost sufficient evidence of its value. Here is a Brahmin telling the highest Indian authorities in England, how he and his countrymen have been governed by us for the last seventy years. He comes fourteen thousand miles to tell his story, and tells it boldly, prudently, and in excellent English. A Brahmin writing English in London, like a man of sense, a man of the world, and a statesman,—after Brahmins, for three thousand years, had written only at home, and there nought but nonsense and *nagari*, is, in itself, a spectacle of the greatest interest and curiosity.

The work consists of the replies which he gave to a series of questions put to him by the India Board, on the administration of justice, revenue, and condition of the people of India ; of some annotations to these replies, with a preface containing a neat, succinct, and original statistical and historical view of India under its Hindu, Mahomedan, and Christian governments.

The following extract will show how judicious and correct are the views entertained by the Rajah on the subject of Indian Jurisprudence:

“ Q. Is there any other impediment to the fair administration of justice besides those you have stated ?

“ A. The first obstacle to the administration of justice is, that its administrators and the persons among whom it is administered have no common language. Secondly, That owing partly to this cause, and also in a great measure to the difference of manners, &c., the communication between these two parties is very limited ; in consequence of which the judges can, with the utmost difficulty, acquire an adequate knowledge of the real nature of the grievances of the persons seeking redress, or of the real character and validity of the evidence by which their claims are supported or opposed. Thirdly, That there is not the same relation between the native pleaders and the judge, as between the British bar and the bench. Fourthly, The want of publicity, owing to the absence of reporters and of a public press to take notice of the proceedings of the courts in the interior ; consequently, there is no superintendence of public opinion to watch whether the judges attend their courts once a day or once a week, or whether they attend to business six hours or one hour a day, or their mode of treating the parties, the witnesses, the native pleaders or law officers, and others attending the courts ; as well as the principles on which they conduct their proceedings and regulate their decisions ; or whether, in fact, they investigate and decide the causes themselves, or leave the judicial business to their native officers and dependants. (In pointing out the importance of the fullest publicity being afforded to judicial proceedings by means of the press, I have no reference to the question of a free press, for the discussion of local politics, a point on which I do not mean to touch.) Fifthly, The great prevalence of perjury, arising partly from the frequency with which oaths are administered in the courts, having taken from them the awe with which they were formerly regarded ; partly from the judges being often unable to detect impositions in a foreign language, and to discriminate nicely the value of evidence amongst a people with whom they have, in general, so little communication ; and partly from the evidence being frequently taken, not by the judge himself, but by his native officers (omlah), whose good will is often secured beforehand by both parties, so that they may not endeavour to detect their false evidence by a strict examination. Under these circumstances the practice of perjury has grown so prevalent, that the facts sworn to by the different parties in a suit are generally directly opposed to each other, so that it has become almost impossible to ascertain the truth, from their contradictory evidence. Sixthly, That the prevalence of perjury has again introduced the practice of forgery to such an extent as to render the administration of justice still more intricate and perplexing. Seventhly, The want of due publicity being given to the regulations which stand at present in place of a code of laws. From their being very voluminous and expensive, the community, generally, have not the means of purchasing them ; nor have they a sufficient opportunity of consulting or copying them in

the judicial and revenue offices where they are kept. As these are usually at a distance from the populous parts of the town, only professional persons, or parties engaged in suits or official business, are in the habit of attending these offices. Eighthly, and lastly, Holding the proceedings in a language foreign to the judges, as well as to the parties and to the witnesses." p. 4.

ART. XI.—PARLIAMENTARY PROCEEDINGS.

The Real Property Commissioners' Bills.

On the 7th of December, Mr. John Campbell, as the head of the Real Property Commission, presented the several bills founded on the reports of that body, viz. :

I. "A bill for establishing a general register for all deeds and instruments affecting real property in England and Wales."

II. "A bill for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto."

III. "A bill for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance in lieu of them."

IV. "A bill for the amendment of the law relating to the estate of a tenant by the curtesy of England."

V. "A bill for the amendment of the law relating to dower."

VI. "A bill for the amendment of the law of inheritance."

The following is a short statement of the principal provisions of these bills :

I. The Register-Bill. Of this bill we propose to give, in our next number, so full an account, that we do not think it necessary to enter into the object of it here.

II. Bill for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto.

Sec. 2. No land or rent is to be recovered but within twenty years after the right of action accrued to the claimant, or some person whose estate he claims.

3. Defines the time at which the right shall be deemed to have accrued in the case of an estate in possession or dispossession, in the case of abatement or death, in case of alienations, in case of future estates, and in case of forfeiture or condition.

4. When advantage shall not be taken by a remainderman of a forfeiture or breach of a condition, he shall have a new right when the estate comes into possession.

5. The reversioner also shall have a new right.

6. An administrator shall claim as if he obtained the estate without any interval after the death of the intestate.

7. No person shall have a new right after a tenancy at will or by sufferance.

8. No person after a tenancy from year to year shall have any right but from the end of the first year, or last payment of the rent.

9. Where rent amounting to twenty shillings reserved on a lease in writing has been wrongfully received, the time of limitation shall run from such first wrongful receipt.

10. A mere entry shall not be deemed possession.

11. Continual claim is abolished.

12. The possession of one coparcener shall not be the possession of the others.

13. The possession of the younger brother shall not be the possession of the heir.

14. An acknowledgment in writing given to the person entitled, or his agent, shall be equivalent to possession or receipt of rent.

15. Where possession is not adverse at the time of passing the act, the right shall not be barred until the end of six years afterwards.

16. Persons under disability, and their representatives, to be allowed ten years from the termination of their disability or death; but no action shall be brought by any such persons after forty years (sec. 17). No further time is allowed for a succession of disabilities (sec. 18).

20. When the right to an estate in possession is barred, the right of the same person to future estates also shall be barred.

21. Where the tenant in tail is barred, the remainderman, whom he might have barred, shall not recover.

22. Possession adverse to a tenant in tail shall run on against the remainderman, whom he might have barred.

23. Where there shall have been possession under an assurance by a tenant in tail which shall not bar the remainders, they shall be barred at the end of twenty years after the time when the assurance, if then executed, would have barred them.

24. Suits in equity to have the same limitation as actions at law.

25. In cases of express trusts the right shall not be deemed to have accrued until a conveyance made to a purchaser.

26. In cases of fraud there shall be no limitation while the fraud remains concealed.

27. The jurisdiction of equity on the ground of acquiescence or otherwise shall not be interfered with.

28. A mortgagee shall be barred at the end of twenty years from the time when the mortgagee took possession, or from the last written acknowledgment.

29. No lands or rents shall be recovered by ecclesiastical or eleemosynary corporation sale but within two incumbencies and six years, or sixty years.

30. No advowson shall be recovered but within three incumbencies, or sixty years.

31. Incumbencies after lapse shall be reckoned within the period, but not incumbencies after promotion to bishopricks.

32. Persons claiming an advowson in remainder, &c. after an estate tail shall be barred when the tenant in tail would have been barred.

33. No advowson shall be recovered after one hundred years.

34. At the end of the period of limitation the right of the party out of possession shall be extinguished.

35. A receipt of the rent shall be deemed a receipt of the profits, as against the lessee.

36. Real and mixed actions, except dower *quare impedit* and ejectment shall be abolished.

37. Saving of the rights of persons entitled to real actions.

38. No descent, discontinuance, or warranty, shall be a bar to a right of entry or action.

39. Non-uses of profits or easements for twenty years shall bar the right thereto, except in case of disability.

40. Money charged upon land and legacies shall be deemed satisfied at the end of twenty years, if there be no interest paid or acknowledgment in writing in the mean time.

41. No arrears of dower shall be recovered for more than six years.

42. No arrears of rent or interest shall be recovered for more than six years.

III. Bill for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance in lieu of them.*

FIRST ENACTMENT.

Definition of certain words and expressions used in the bill.

1. "Lands" shall extend to manors, messuages, &c. and to any undivided share thereof, but not to copyholds, except when accompanied by some expressions showing they are included.

"Estate" shall extend to an equitable estate, and to any interest, charge or incumbrance, and to any judgment, statute, or recognizance.

"Base fee" shall mean a fee-simple where the issues in tail are barred, but remaindermen are not barred.

"Estate tail" shall mean also a base fee.

"Actual tenant in tail" shall mean the tenant of an estate tail unbarred.

"Tenant in tail" shall mean, not only an actual tenant in tail, but also a person who where an estate tail is converted into a base fee would have been tenant of the estate tail if the same had not been barred.

"Person" shall extend to a corporation.

"Number and gender;" the singular number shall include the plural, and the plural number shall include the singular, and the masculine gender shall include the feminine.

"Settlement;" any assurance by which lands are or are agreed or directed to be entailed, and any appointment under a power in a settlement or under a power arising out of that power, shall be part of the settlement; and any estate created by the appointment shall be considered as created by the settlement.

* This analysis is given at the conclusion of the printed bill.

SECOND SET OF ENACTMENTS.

Provisions respecting,

- I. The abolition of fines and recoveries.
- II. The saving of the amendment of them, and the rendering of them valid in certain cases.
- III. The custody of them.
- IV. The compensation to officers and grantees.
- V. The tenure of ancient demesne.
- VI. The abolition of warranty.

(I.)—2. No fine or recovery shall be levied or suffered after the 31st of December, 1832, except where a writ of *dedimus* or other writ shall have been previously sued out.

(II.)—3. Fines having errors or mistakes in the parcels or parties apparent from the deeds declaring the uses, shall not require amendment.

4. Recoveries having errors or mistakes in the parcels or parties apparent from the deeds making the tenants to the writs of entry, shall not require amendment.

5. Recoveries invalid in consequence of there not being proper tenants to the writs of entry, made valid in case the persons having the beneficial estates have made the tenants to the writs.

6. Certain cases in which fines and recoveries shall not be made valid by this act.

7. The jurisdiction of courts to amend fines and recoveries in cases not provided for by this act, not taken away.

(III.)—8. The records and proceedings of fines and recoveries in the Courts of Common Pleas at Westminster and Lancaster and in the Court of Pleas at Durham, shall be kept as the respective courts and justices shall direct; and searches may be made and extracts and copies obtained as heretofore while in the custody of the present persons, and when kept by other persons then as shall be ordered by the court of justices having control over the same.

(IV.)—9. Compensation shall be made out of the consolidated fund to officers and grantees of the crown, for losses in consequence of the abolition of fines and recoveries, and for which compensation cannot be made by 11 Geo. IV. and 1 W. IV. c. 58.

(V.)—10. Fines or recoveries of lands in ancient demesne levied or suffered in the manor court, after fines or recoveries shall have been levied or suffered in a superior court, shall be binding on all persons, but the original tenure shall not be restored.

(VI.)—11. Estates tail and estates expectant thereon no longer barable by warranty.

THIRD SET OF ENACTMENTS.

New Provisions respecting Estates Tail, and Base Fees, and Estates Expectant thereon.

I. The barring of estates tail and estates expectant thereon, and the enlarging of base fees.

II. Definition of the protector.

III. Powers of the protector.

IV. Confirmation of voidable estates created by tenants in tail.

V. Enlargement of base fees, when no intermediate estates between them and the reversions.

VI. Modes by which estates tail and estates expectant thereon are to be barred, and by which base fees are to be enlarged, and by which the consent of the protector is to be given.

VII. Copyholds.

VIII. Bankrupts.

IX. Money to be laid out in lands to be entailed.

(I.) 12. After the 31st of December, 1832, every actual tenant in tail in possession, remainder, contingency, or otherwise, shall have full power to dispose of the lands entailed in fee-simple absolute or for any less estate, saving the rights of certain persons.

13. The power of disposition shall not be exercised by women tenants in tail *ex provisione viri*, under 11 H. VII. c. 20, except with such assent as required by that act.

14. Except as to lands in settlements made before the passing of this act, the 11 Hen. VII. c. 20, repealed.

15. The power of disposition shall not extend to tenants in tail restrained by the 34th and 35th Hen. VIII. c. 20, or by any other act; nor to tenants in tail after possibility of issue extinct.

16. Every person who would have been actual tenant in tail of lands if his estate tail had not been converted into a base fee, shall have full power to dispose of the lands so as to enlarge the base fee into a fee-simple absolute, saving the rights of certain persons.

17. Act shall not extend to enable issue inheritable to estates tail to bar their expectancies.

18. A disposition by a tenant in tail for any limited purpose, shall, to the extent of the estate thereby created, be a bar in equity as well as at law; but if for an estate *pour autre vie*, or for years, the disposition shall in equity be a bar only so far as to give effect to the limited purpose.

(II.)—19. Where there shall be under a settlement an estate for years determinable on life, or any greater estate prior to an estate tail under the same settlement, the owner of such prior estate shall be the protector of the settlement as to the lands in which such estate shall subsist, though the same may have been charged or disposed of; and an estate by the curtesy in respect of the estate tail or any prior estate created by the same settlement, shall be a prior estate; and an estate by way of resulting use or trust for the settlor, and a right to the surplus rents, shall be an estate within the meaning of this clause.

20. Each of two or more owners of a prior estate shall be the sole protector, to the extent of his undivided share.

21. Where the prior estate of a married woman shall not be settled to her separate use, she and her husband together shall be the protector; and where settled to her separate use, she alone shall be the protector.

22. An estate limited by a settlement by way of confirmation or restoration of a previous estate, shall, so far as regards the protector, be an estate under such settlement.

23. The owner of a lease at a rent created or confirmed by a settlement, shall not be the protector.

24. No woman in respect of her dower, and no heir, executor, administrator, or assign, as such, shall be the protector.

25. Where the owner of the prior estate shall by the two last clauses not be the protector, the person who if such estate did not exist would be the protector shall be the protector.

26. Power to the lord chancellor, &c. on petition of a tenant in tail desirous of making a disposition, where the protector shall be of unsound mind, whether found such by inquisition or not, to appoint a protector to consent to the disposition. If, where husband and wife are protector, either shall be of unsound mind, but not found such by inquisition, then power to the lord chancellor, &c. to appoint a protector jointly with the other, to consent to the disposition, or to direct the husband or wife, who shall not be of unsound mind, to be the sole protector for the purpose. But if where husband and wife are protector, either shall be of unsound mind, and found such by inquisition, then the other shall during their joint lives, or until the commission be superseded, be the sole protector.

(III.)—27. Where there is a protector, his consent shall be requisite to enable an actual tenant in tail who is not entitled to the immediate reversion in fee, to make an absolute disposition under this act. Without such consent, an actual tenant in tail may create only a base fee.

28. Where there is a base fee and a protector, his consent shall be requisite to enable the person who would have been tenant of the estate tail if not barred, to exercise his power of disposition.

29. The protector shall not be deemed a trustee in respect of his power of consent, and any agreement to withhold his consent shall be void, and a court of equity shall not control it.

(IV.)—30. A voidable estate by a tenant in tail in favour of a purchaser, shall by a subsequent disposition by him, if no protector, or being such, with his consent, be confirmed; if a protector, and he shall not consent, and the voidable estate shall have been created on or before the 31st of December, 1832, then the same shall be confirmed, so far as the tenant in tail could then make such disposition without such consent.

(V.)—31. Whenever a person entitled to a base fee shall become entitled to the immediate reversion in fee, the base fee shall not merge, but shall be enlarged.

(VI.)—32. Any disposition by a tenant in tail under this act shall be effected by any assurance (except an agreement or will) by which he could have conveyed if seised in fee; and if a married woman, her husband's concurrence shall be necessary, and the deed effecting the disposition shall be acknowledged by her as after directed.

33. Consent of the protector shall be given by the assurance by which the disposition of a tenant in tail shall be effected, or by a distinct deed before or at the time of the assurance.

34. If the protector consent by a deed distinct from the assurance, it shall be considered unqualified, unless he refer to the assurance and confine his consent to the disposition thereby made.

35. Protector having given his consent, shall not revoke the same.

36. A married woman protector may consent as if she were a feme sole.

37. The consent of a protector, if by a distinct deed, void, unless the deed be registered with or before the assurance.

(VII.)—38. The previous clauses shall apply to copyholds; except that dispositions of legal estates therein shall be by surrender, and of equitable estates either by surrender or by deed as after provided, and except so far as they are varied by the clauses after contained.

39. If the protector of a settlement of copyholds shall by deed consent to the disposition of a tenant in tail, such deed shall, at or before the surrender by the tenant in tail, be produced to the lord or steward of the manor, otherwise the consent shall be void; and the lord or steward shall by indorsement on the deed acknowledge such production, and enter such deed and indorsement on the rolls, and the indorsement shall be evidence of such production; and such entry, or a copy thereof, shall be evidence as any other entry or copy.

40. If the consent of the protector of a settlement of copyholds shall not be by deed, it shall be given to the person taking the surrender of the tenant in tail; and if the surrender be out of court, the consent shall be stated in the memorandum of surrender, and the memorandum signed by the protector shall be entered on the rolls, and shall be evidence of the consent and surrender; but if the surrender be in court, the lord or steward shall enter the surrender on the rolls, with a statement that such consent had been given; and the entries or copies thereof shall be evidence, as other entries or copies.

41. An equitable tenant in tail of copyholds shall have power by deed to dispose of the same under this act, as if freehold, such deed to be entered on the court rolls. If a protector and his consent be given by a distinct deed, the consent shall be void unless the deed be entered on the court rolls with or before the deed of disposition. Such entries shall be imperative on the lord or steward, and shall be evidence as any other entry or copy. The deed of disposition, unless entered on the rolls, void against purchasers.

42. Where a disposition of copyholds by a tenant in tail shall be by surrender or deed, such surrender or the memorandum, or a copy thereof, or the deed of disposition, or the deed (if any) by which the protector shall consent, shall not require registration.

(VIII.)—43. Repeal of the Bankrupt Act, so far as relates to estates tail, 6 Geo. IV. c. 16, s. 65.

44. The commissioners in the case of an actual tenant in tail of lands of any tenure in England or Ireland becoming bankrupt, shall by deed inrolled dispose of the same, if freehold, to the assignees, and if copyhold, to a purchaser; and thereby create as large an estate as the actual tenant in tail could have done under this act if not bankrupt; but if there be a protector and he shall not consent, then the estate shall be an estate as large as such actual tenant in tail, if not bankrupt, could have created without such consent.

45. The commissioners, in the case of a person entitled to a base fee in lands of any tenure in England or Ireland becoming bankrupt,

and who if the base fee had not been created would have been actual tenant in tail, where there is no protector, shall by deed inrolled dispose of the lands, if freehold, to the assignees, and if copyhold, to a purchaser, and thereby enlarge the base fee into a fee-simple.

46. Every deed of disposition under this act by the commissioners of a bankrupt, shall, when inrolled, take effect as if inrolment not required.

47. Where there is a protector, the disposition, with his consent, by the commissioners, in the case of an actual tenant in tail becoming bankrupt, or of a person entitled to a base fee becoming bankrupt, and who if the base fee had not been created would have been actual tenant in tail, or the conveyance of the assignees with the consent of the protector, shall have the same effect as if made with the consent of the protector by the actual tenant in tail or person so entitled. The previous clauses as to consent, shall apply to every consent under this clause, except that where the consent to the disposition by the commissioners shall be by a distinct deed, such deed shall be inrolled with the deed of disposition, or before and in the same court; and where the consent to the conveyance by the assignees shall be by a distinct deed, such deed shall be inrolled in Chancery within six calendar months; and where the consent shall be in the conveyance by the assignees, such conveyance shall be inrolled in like manner.

48. If commissioners shall under this act dispose of the lands of an actual tenant in tail becoming bankrupt, and in consequence of there being a protector who shall not consent, a base fee shall be created, such base fee, if during its continuance there ceased to be a protector, shall be enlarged.

49. If a person entitled to a base fee in lands, and who if the base fee had not been created would have been actual tenant in tail, shall become bankrupt, and if when the commissioners dispose of the lands under this act there shall be a protector who shall not consent, such base fee, if during its continuance there cease to be a protector, shall be enlarged.

50. A voidable estate in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a person entitled to a base fee becoming bankrupt, and who if the base fee had not been created would have been actual tenant in tail, shall, by a disposition of the commissioners under this act, if no protector, or being such with his consent, be confirmed. If in the case of an actual tenant in tail, who shall have created a voidable estate on or before the 31st of December, 1832, there be a protector, and he shall not consent, then the voidable estate shall be confirmed, so far as he, if not bankrupt, could have made a disposition under this act without such consent; but if, when the lands are conveyed by the assignees, there be a protector, and he consent to the conveyance, or if after the disposition by the commissioners, and while only a base fee, there shall cease to be a protector, then the voidable estate shall, so far as not previously confirmed, be confirmed as against all persons, except those whose rights are saved.

51. All acts of a tenant in tail becoming bankrupt, and which if he had been seised in fee would have been void against the convey-

ance of the commissioners to the assignees, shall be void against any disposition under this act by the commissioners.

(IX.)—52. Peepal of the statute 7 Geo. 14. c. 45, respecting entailed estates to be purchased with trust monies; 39 & 40 Geo. III. c. 56, not to be revived.

53. Money to be laid out in lands to be entailed shall be treated as land subject to the same estates as the lands if purchased, and the previous clauses shall apply to such money as if the same were laid out in freehold lands; and, except as to commissioners of bankrupts, the assurance by which any disposition of such money shall be effected shall be a deed which shall have no operation unless inrolled in Chancery within six calendar months. If a protector, and his consent be given by a distinct deed, the consent shall be void, unless inrolled in Chancery with or before the deed of disposition.

54. This act shall apply to stocks or funds, or real or other securities, in which money to be laid out in lands to be entailed shall be invested.

FOURTH SET OF ENACTMENTS.

New Provisions respecting Married Women.

I. Their powers of disposition with the concurrence of their husbands.

II. Their separate examination and acknowledgment of deeds.

III. Their separate examination on the surrender of their equitable estates in copyholds.

IV. The Court of Common Pleas empowered to dispense with the concurrence of their husbands, in certain cases.

(I.) 55. After the 31st of December, 1832, a married woman, in every case except that of being tenant in tail, may by deed dispose of lands of any tenure, and money to be laid out in lands of any tenure, and dispose of, release, surrender, or extinguish any estate therein, and may release or extinguish powers as if she were a feme sole; but to render the same valid, her husband must concur, and the deed must be acknowledged by her as after mentioned. Not to extend to copyholds where before this act she and her husband could have effected the same by surrender.

56. The powers of disposition given to a married woman by this act shall not interfere with any other powers she may have.

(II.)—57. Every deed by a married woman for any of the purposes of this act, except such as may be executed by her as protector, shall be produced and acknowledged by her before a judge or master in Chancery, or two of the perpetual commissioners, or two special commissioners.

58. The judge, master in Chancery, or commissioners, before receiving the acknowledgment of a deed by a married woman, shall examine her apart from her husband, and unless she freely consent shall not permit her to acknowledge the deed.

59. The lord chief justice of the Common Pleas shall appoint perpetual commissioners for each county for taking acknowledgments; and lists of the commissioners for each county shall be made out and kept by the officer of the Common Pleas, who is to have the custody of the certificates after mentioned; and such officer shall transmit to the clerk of the

peace for each county, or his deputy, a copy of the list for that county, and shall deliver a copy of the list for any county to any person applying; and the clerk of the peace, or his deputy, shall deliver a copy of the list last transmitted to him to any person applying.

60. If, from being beyond the seas, &c., a married woman be prevented from making the acknowledgment before a judge or master in Chancery, or any of the perpetual commissioners, the Court of Common Pleas, or any judge thereof, may appoint special commissioners for the purpose.

61. When a married woman shall acknowledge a deed, the judge, master in Chancery, or commissioners taking the acknowledgment, shall sign a memorandum, to be indorsed or written at the foot or in the margin of the deed, to the effect mentioned in the act, and shall also sign a certificate of the taking of such acknowledgment, to be engrossed on a separate piece of parchment, which certificate shall be to the effect mentioned in the act.

62. Every certificate, with an affidavit verifying the same, shall be lodged with some officer of the Court of Common Pleas, who shall examine the certificate, and see that it is signed and verified, and contains the requisite statement, and, if so, shall cause the same and the affidavit to be filed of record in the said court.

63. On the filing of the certificate, the deed shall by relation take effect from the time of its having been acknowledged.

64. The officer with whom the certificates are lodged shall make and keep an index of the same.

65. After the filing of a certificate, the officer shall, on application, deliver a copy thereof, signed by him, and such copy shall be evidence of the acknowledgment.

66. The lord chief justice of the Common Pleas shall appoint the officer with whom the certificates shall be lodged; and the Court of Common Pleas shall make orders touching the examination, memorandums, certificates and affidavits, and the time when the proceedings shall take place, and the amount of fees.

(III.)—67. A married woman shall be separately examined on the surrender of copyholds, to which she alone, or she and her husband in her right, may be entitled for an equitable estate, as if such estate were legal.

(IV.)—68. Power to the Court of Common Pleas in the case of a husband being lunatic or otherwise incapable of executing a deed or making a surrender of copyholds, or of his residence being unknown, or of his living separate from his wife, by an order on the application of the wife, to dispense with his concurrence in any case except as protector, where he is of unsound mind.

LAST ENACTMENT.

69. To make any disposition, or to give any consent, &c. under this act, it shall not be necessary to refer to the same.

IV.—Bill for the amendment of the law relating to the estate of a tenant by the curtesy of England.

Sec. 1. Actual seisin shall not be necessary to give a title as tenant by the curtesy.

2. Husband shall be tenant by the curtesy notwithstanding there may have been no issue.

3. Where there shall be issue of a former marriage, the estate by the curtesy shall extend to only one moiety of the hereditaments.

4. The act not to extend to copyhold, gavelkind, or borough-English hereditaments.

5. The act not to extend to cases where the wife shall have died before 1st Jan. 1833.

V.—Bill for amending the law relating to dower.

Sec. 2. Widows to be entitled to dower out of equitable estates.

3. Seisin shall not be necessary to give a title to dower.

4. There shall be no dower out of estates sold or devised.

5. Partial estates and charges created by the husband, and his specialty debts and engagements, shall have priority over dower.

6. Charges may be apportioned between widow and heir.

7. Dower may be barred by a declaration in a deed,

8. Or by a declaration in the husband's will.

9. Dower shall be subject to any restrictions expressed in the husband's will.

10. Devise of real estate to the widow shall bar her of dower, unless a contrary intention appear.

11. Bequest of personal estate to widow, shall not bar her of dower, unless a contrary intention appear.

12. Agreement not to bar the wife of dower may be enforced in equity.

13. Legacies in bar of dower to be still entitled to preference.

14. Dower *ad ostium ecclesia* and *ex assensu patris* abolished.

15. Act not to extend to gavel kind, or borough-English, or copyhold lands.

16. Act not to take effect where the husband shall have died before the 1st. Jan. 1833.

VI.—Bill for the amendment of the law of inheritance.

Sec. 2. Descent shall be traced from the purchaser, but the person last entitled to the land shall be considered the purchaser until the contrary be proved.

3. Land devised to an heir shall go to him as devisee, and not as heir, and a limitation by a grantor to himself and his heirs shall give an estate by purchase, and the grantor shall not take it as his former estate.

4. When heirs take by purchase, under limitations, to the heirs of their ancestors, the land shall descend as if the ancestor had been the purchaser.

5. Land may be limited to any person and his heirs on the part of any of his lineal ancestors of whom he shall be the heir, and the land shall descend as if such ancestor had been the purchaser.

6. On a failure of heirs of the purchaser the descent shall be traced from the person last entitled to the land.

7. Brothers and sisters shall trace their descent through their parent.

8. Lineal ancestors shall be heirs in preference to collateral persons claiming through them, as the father before the brother or sister.

9. Proviso, that the male line be preferred.

10. On failure of male paternal ancestors the mother of a more remote male paternal ancestor shall be preferred to the mother of the less remote male paternal ancestor.*

11. The half-blood, if on the part of a male ancestor, shall inherit after the whole blood of the same degree; if on the part of a female ancestor, after her so that the mother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father, and their issue, and the brother of the half blood on the part of the mother next after the mother.

12. Descent may be traced through an alien.

13. Descent may be traced through an ancestor who has died attainted.

15. Saving of limitations made before 1st Jan. 1833.

No discussion deserving the name of a debate has yet taken place on the subject of these important measures, which are now lingering in the House of Commons, with little chance, we are afraid, of passing into laws during the present session.

Common Law Commissions.

On the 6th of March the lord chancellor moved for an address to his Majesty for a copy of the last report of the Common Law Commissioners. The following is the statement given by the chancellor of the result of the commissioners' labours:

"The commissioners have conducted the inquiry with the most exemplary industry and impartiality, and with the most consummate intelligence, and have collected a mass of evidence of the highest importance, in regard to the topics to which their attention has been directed; and, moreover, have given opinions upon these topics, and upon the effect of the evidence, which are worthy of the most serious consideration of both houses of parliament. I may mention one important topic to which they have paid particular attention, and as to which they have collected a great deal of most valuable evidence—I mean the process of law as between debtor and creditor. On this point also the commissioners have given their opinions, founded, as their opinions generally are, upon true and solid principles of improvement; and the majority are of opinion, that imprisonment for debt, both on *mesne* process and in execution, ought, if possible, to be abolished. I trust your lordships will not be startled at this proposition, or form any unfavourable opinion in respect of this recommendation going too far; at least, I ask you to suspend your judgments until you have had an opportunity of considering the reasons on which the recommendation is made, and the evidence on which it is founded. That creditors should have every means of obtain-

* This clause is a *declaratory* one, and thus settles the *veraxa questio* of descent between Sir W. Blackstone and his editor, Mr. Christian.

ing payment of their debts, from debtors who could pay if they chose,—that all means should be taken from debtors of fraudulently defeating the just claims of their creditors,—that all those anomalies should be expunged from the law, by which unfair debtors are enabled to set their creditors at defiance,—that those rules of practice should be abolished by which creditors are hampered in their attempts to recover their debts, and by which fraudulent and unfair debtors are enabled to escape from the payment of their just debts, are principles founded on the soundest and most solid reason; and there is hope that those inconsistencies in law proceedings which stand in the way of these desirable results, may be gradually and temperately, but effectually removed, if this report should receive the sanction of this and the other house of parliament. When I speak of the abolition of imprisonment for debt on *mesne* process and after judgment, that must, of course, be understood as coupled with the putting of means into the hands of creditors for the recovery of their debts, of which, by the law as it at present stands, they are deprived, and of which they have for a very long time, if not for nearly time out of mind, been deprived by the alteration of circumstances, with reference to common law proceedings. The principle of the law no doubt originally was, and must have been, that the whole of the property of a debtor should be liable to the claims of the just and *bona fide* creditor. It never could have been meant, that while what was technically called the goods of a debtor should be liable to the claims of a creditor, that more important part of his property which did not come under that technical denomination should be exempted. In the earliest state of the common law, these goods and chattels were generally all the property that a man possessed, and to these the common law process was confined. But in progress of time circumstances have altered, and a most important and large mass of property has arisen, founded on credit, and this property the creditor finds it impossible to attach by the common law process. The great bulk of the property of a debtor may consist of credits. He may have property in the public funds, for instance, to a hundred times greater amount than the goods and chattels or personal property in his possession, and yet there is no provision in the common law by which the creditor can directly attach that species of property. A man may have the great bulk of his property in the funds, and there it is exempt from the common law process. The great bulk of a man's property may consist of debts due to him, but this property the creditor cannot reach by the common law process. Nay, the debtor may have gold and silver lying on his table, the very gold and silver borrowed from the creditor himself,—and yet the creditor cannot touch the money, not even his own gold and silver, by the common law process; and the oracular reason of the law is, that money does not come under the technical denomination of goods, and that it would be removing land marks and essential distinctions, if money could be taken even in a process in execution against goods. I mention this merely as an instance of defect in the law which calls loudly for amendment, without at all meaning to go at length into a discussion of the subject of the report. I mention it to show that the improvements in this particular recommended in the report are not, properly speaking, innovations or alterations in the prin-

ciple and foundation of the law, but only applications of the original principle and reason of the law to the change of circumstances which has taken place since the common law process was first framed and established. What is proposed is, to give its full effect to the new state of circumstances, by bringing within the reach of that process the property founded on credit, which, when the process was originally formed, had scarcely any existence. The commissioners have also investigated, with great pains, calmness, judiciousness, and ability, the subject of imprisonment for debt on *mesne* process, and the majority of them are of opinion that imprisonment of the person on *mesne* process may, under certain circumstances, be dispensed with, as well as imprisonment in execution. But this of course must be accompanied with putting increased powers into the hands of the creditors to get at the effects of the debtors; and even imprisonment may be retained as a means of compelling a debtor to give up his property, and also as a punishment for fraud or criminal conduct, either in a legal or a moral sense,—for acts which should be either legally criminal or *quasi* criminal, as being crimes in a moral point of view. If a debtor fraudulently refused to surrender his property, he would have no just reason to complain that he was imprisoned until he did surrender for the payment of his just debts, nor would he have any just reason to complain if he should be imprisoned as a punishment for having endeavoured to defeat his just creditor by fraud, or any other act legally or morally criminal. People might, by an extravagant expenditure as compared with their incomes, contract debts which they must themselves be well assured they could not possibly pay; and this might be considered as a fraud, and might be properly punished as such. Where a debtor refuses to surrender his property, or when he has fraudulently contracted debts, in either case imprisonment might still be retained, in the one case to compel payment, and in the other as a punishment. This appears to be very sound doctrine, and one which well deserves to be sanctioned by the legislature. There is another instance in which imprisonment on *mesne* process might be properly retained, and that is, when there should be reasonable grounds to apprehend an escape, and in one or two other cases with which I will not now trouble the house.”

The report has not yet been printed, nor will it appear in time to be noticed in our present number. A full review of it will, however, be given in our number for November.

Process of the Common Law Courts.

On the 1st of March Lord Tenterden presented a bill for establishing uniformity of process in suits at law, which he introduced with the following observations:

“My lords, in presenting a bill for establishing uniformity of process in personal actions commenced in the courts of law at Westminster, I shall make but a very few observations, because I feel that is impossible to give an interest to the details of such a subject, or to render some of

them intelligible to persons-unacquainted with the practice of the courts. I must advert shortly to the great difference and variety of forms in use for the commencement of personal actions, not only in the different courts, but even in the same court, many of which are founded upon reasons that are obsolete or have ceased to exist; but being of very ancient date, it is not fit to attempt to abrogate or alter them, without the authority of parliament. Alterations of this kind are the only object of the present measure, alterations of form only, and not affecting any substantial matter of law. The first process, where it is not intended to hold the party to bail, is proposed to be by a writ of summons only, to be used by and against all persons, whether having privilege of peerage, of parliament, or of the court in which the suit is commenced. I think myself bound to notice this to your lordships, though I am perfectly satisfied that no objection will be made on your part. A change in the first process necessarily requires some change in the form of some of the subsequent proceedings; and provisions for this purpose are accordingly introduced into the bill. In framing the new forms, care has been taken to render them easily intelligible to defendants, to express in them the nature and object of the suit, and to inform defendants of the consequence of not complying with the exigency of the writ. The bill is founded upon the recommendation contained in the supplement to the first report of the commissioners, and it has received in its present form the sanction of some of the learned judges of each of the three courts. Matters of practice and detail of this nature necessarily require minute attention, not merely to render them perfect in themselves, but also to accommodate them to those parts of an ancient system that are to remain unaltered. I shall therefore postpone the second reading of the bill for some few days, in order to give an opportunity for further attention and consideration, and for any suggestions that may be made for the improvement of the measure.

"I now desire to avail myself of this opportunity of mentioning to your lordships, that many general rules have lately been made, by the judges of the three courts, for obtaining an uniformity of practice in many matters, on which differences have hitherto prevailed, and which will be removed by these new rules, wherein the practice that seems in each case to be most suitable has been adopted. Other rules for the improvement of the practice, and the more expeditious and cheap administration of the law, have also been made by the learned judges, and others are in contemplation. By one of these rules, in particular, the form of declaring in actions for the recovery of pecuniary demands, now by far the most numerous class, is greatly abridged, by which alone a very considerable part of the expence of such an action will be saved, and the temptation to go beyond the first process will be diminished, by diminishing the profit of the second in the cause."

The following are the provisions of Lord Tenterden's bill:—

— Non-bailable process in all the courts to be by writ of summons, in a form given by the act, and such writ shall contain the residence of the defendant, and shall be issued by the usual officer (sec. 1). The appearance shall be by a memorandum, delivered to such person as the court

shall direct (sec. 2). If it is made to appear to the court that the defendant has not been personally served with the summons, and cannot be made to appear, a *distringas* may issue, returnable in not less than fifteen days after the *teste*, and on a return of *non est inventus* and *nulla bona*, and non-appearance of the defendant for eight days after the return, the court may authorise the plaintiff to enter an appearance for the defendant (sec. 3).

Bailable process is to be by writ of *capias* in all the courts; and where there are several defendants, each is to be served with a copy (sec. 4). On a return of *non est inventus* and *nulla bona*, the plaintiff may proceed to outlawry by *exigi facias* and proclamation (sec. 4); and after judgment given in an action commenced by writ of summons or *capias*, proceedings to outlawry may be taken (sec. 5); and for the purposes of outlawry a filacer is to be appointed in the Court of Exchequer (sec. 7).

The mode of proceeding against prisoners in the custody of the marshal and warden, and against members of parliament, is pointed out by sec. 8 and 9.

No writ under the act shall be in force more than four months; and to prevent the operation of the statute of limitations, a writ must be served, or proceedings to outlawry be taken, or the writ issued in continuation of a former writ be returned *non est inventus*, and entered of record, within one calendar month (sec. 10).

Writs executed on *any* day in term may be proceeded upon without reference to their being executed within the four last days of term (sec. 11). Writs to bear date the day they are issued, and to be indorsed with the name and place of abode of the attorney issuing them; and in case of no attorney, with the name of the party (sec. 12).

Writs against corporations aggregate to be served on their officers, against hundredors on the high constable, and against inhabitants, &c. on some peace officer (sec. 13).

General rules may be made by the judges for the execution of the act (sec. 14); and they may make rules and orders for the return of writs (sec. 15).

Attornies whose names are indorsed on writs, may be compelled to declare the occupation and place of abode of the plaintiff (sec. 17).

The act is to take effect the first day of Michaelmas term.

Forms are given in the schedule of the writs, memoranda, &c.

This bill passed without opposition, and received the royal assent on the 23d May.

Reforms in the Court of Chancery.

On the 15th of December, Mr. Spence, in presenting the petition of Joseph Harrington, for an inquiry into the state of the practice of the Court of Chancery, especially to that part relating to proceedings before the master, said,—

“The case detailed in this petition is, unfortunately, of frequent occurrence in the Court of Chancery, though any person unacquainted with the proceedings of that court might be induced to suppose, that in a

country like this, such a case must be of rare occurrence. The will of a testator, in which will the petitioner was interested, became the subject of a suit in the Court of Chancery, and the result of that suit was an attorney's bill of costs amounting to 7,000*l*. Part of this bill the petitioner has paid, and he thinks that he has paid the whole amount that is fairly due. The Court of Chancery, however, tells him that if he has been overcharged, he must have the bill of costs taxed; but the petitioner finds that the taxation would cost him no less a sum than 1,500*l*., and the petition details the various sums which he would be called upon to pay, if he submitted the bill of costs to taxation. It contains 7,000 folios—the mere attorney's bill of costs contains 7,000 folios. The cost of taking copies, which are of no earthly use, but which are still an indispensable preliminary to submitting the bill to taxation, will cost 700*l*. The costs of attendance which he would pay to the solicitor and clerks of court would cost 746*l*. 13*s*. Then there are charges for warrants, and the service of those warrants, and the whole amounts to above 1,500*l*. for the taxation of one bill of costs.

“There are other instances I could mention of a similar nature, but that I do not feel myself justified in occupying so much of the time of the house. There was a bill lately filed on behalf of the Brewers' Company. It was to recover the sum of 583*l*. 7*s*. 4*d*., and the question afterwards arose who was to pay the costs, amounting to 900*l*., the bill having been filed to recover 500*l*. The question was argued in the Rolls Court. I should be, perhaps, disposed to dwell more on the enormity of these cases, but that there is now a prospect of the abuses from which they spring being speedily and effectually reformed. I am authorised to state, and, indeed, I might say, that I know it of my own knowledge, that measures are in preparation for the effectual reform of the most crying of the abuses of the Court of Chancery. Though every individual, at all acquainted with the subject, is fully impressed with the necessity of due deliberation, and that no hasty measure should be brought forward; yet I think that I am not too sanguine in expressing my conviction, that early after the recess, one or more bill or bills will be introduced, either into this or the other house of parliament, for, amongst other things, the remedy of the abuses which this petition points out in such strong terms, and for a thorough reform of the business of the master's office.”

On a subsequent day Mr. Spence, on a question put to him, stated, that bills had been prepared for the purpose of effecting certain reforms in the Court of Chancery, but whether they would be brought in during the present session, he could not with certainty say.

Equity Process.

An act has been introduced and passed during the present session, to effectuate the service of process issuing from the Courts of Chancery and Exchequer in England and Ireland respectively (2 W. 4. c. 33). By this act (sec. 1) the courts above-mentioned in England, in suits concerning lands, &c. in England, are empowered to direct process to be served in other parts of the United

Kingdom; and by sec. 2, the Irish courts of equity have a similar power. With the subpoena served under this act, a copy of the prayer of the bill is also to be served, and no process of contempt is to be entered without special order.

Writs de Lunatico Inquirendo.

A bill has been brought in to lessen the expences of the hitherto costly proceedings with regard to the execution of writs *de lunatico inquirendo*, and will most probably pass in the course of the present session. It empowers the chancellor. to appoint *one* or more instead of *three* commissioners, to make inquisition; and enables him also to appoint three or more persons to be visitors, during pleasure, for superintending, under the order of the chancellor, the care of persons found lunatic by inquisition, and to make orders as to the duties of such visitors. Persons interested in houses licensed for the reception of insane persons are not to be visitors. A secretary and clerk to the visitors are to be appointed.

The Abolition of the Court of Exchequer in Scotland.

On the 15th of December, the lord advocate of Scotland brought in a bill to abolish the Court of Exchequer in that country, on the ground of its being an unnecessary and expensive establishment. From certain returns moved for in the House of Lords, the lord advocate made the following statement in support of the bill:

“I will trouble the house with a few of the particulars that are set down in the returns; for instance, the total number of defended causes in twenty years was 134, that is, an average of about six and a half per year. This applies to the last twenty years; but if we take a shorter period, it will appear that the average of the number of trials in a year is considerably smaller. For instance, during the last ten years, the average has been only four causes a-year; and, in the last two years, there has been only one defended before the court. Now this miserable deficiency in the number of causes tried is not at all commensurate with the number of officers attached to the court, and the amount of the salaries paid to them. To get through this business, the court consists of a chief baron and three puisne barons, the former with a salary of 4,000*l.* a-year, and the other barons with salaries of 2,000*l.* a-year each. There are also several officers of the court who receive large salaries. I should have observed, that the number of arguments it has heard during the last twenty years is ninety, that is, on the average four and a half in the year. I am aware that there are a great number of causes set down in one of the returns as having been disposed of before this court; but many are entered here which there is no intention to bring to trial. Thus we find in one of the returns that it is stated that no less than 5,700 causes were brought into court in a certain number of years; but of these more than four-fifths never were prepared for trial, nor was there

ever any intention to bring them to trial. The great portion were merely admonitions to persons who were in arrear for their taxes, and a notice from the Court of Exchequer was sent to them to state, that if they were not paid, proceedings would be adopted.

“Again, many of the remaining cases were for infringing the revenue laws, the great portion of which are always disposed of by the parties entering into a composition with the crown. I do not hesitate to assert, that the judicial time of the Court of Exchequer in Scotland has not been occupied with more than one cause of any consequence in a term for the last twelve years. I can speak with some degree of confidence on this subject, in consequence of my professional avocations occasionally calling me into that court; and I do not hesitate to assert, that the great portion of the causes tried require the display of no great talent on the part of the judge, as they are generally proceedings against persons for illegally making soap or candles, or for some similar infringement of the excise laws. Will any one pretend to assert, that, for the determination of cases of this nature, the talents of a chief baron, and three puisne barons, with large salaries, are necessary? But it may be said, that these learned persons have other duties to perform. I admit that this is the case, but I deny that those duties are of a nature that cannot be equally well performed elsewhere. Thus it is a part of their duty to examine all charters granted by the crown, and also to revise at a court of appeal the decisions of the justices of the peace in revenue cases, and also to hear appeals in cases connected with overcharges in assessed taxes. But nearly every case of either of these kinds is determined in the Exchequer Chamber; and I believe that there is not an instance of counsel being employed in these proceedings; and they occupy a most inconsiderable portion of time. I am convinced that all this business can be transacted in as satisfactory manner as it is now, both to the suitors in the court and the public, according to the mode suggested in the bill which I propose to submit to the house. In addition to the judges of this court, there are eight accountants with large salaries, and also a remembrancer. I admit that, by means of these officers, some business is transacted, which is not of a judicial nature, but I am sure that an arrangement can be made that will be satisfactory on this point.”

The bill, after some opposition from Sir William Rae, went into committee on the 31st of May, and will, in all probability, be passed during the present session.

The Poor Laws.

On the 8th of December the Marquis of Salisbury enquired from the lord chancellor whether ministers had it in view to propose any measure for the improvement of the existing system of the Poor Laws; and, in reply, the lord chancellor stated that undoubtedly a measure on that subject would be brought forward either by him, or by some other member of the government, in the course of the session.

The subject was again revived on the 2d of February, and a commission has since issued to the Bishop of London, Mr. Senior, Mr. Coulson, and several others, directing them to inquire into and report upon the present state of the Poor Laws.

County Courts.

The attention of parliament was drawn to this subject by a motion made by Mr. Hunt on the 8th of May for certain returns relative to the Courts of Requests in London and Westminster, which gave rise to a short debate on the mode of recovering small debts. Sir Robert Peel stated that he had some time ago been prepared to bring in a bill for amending the constitution of the county courts, but some questions arose which threw a difficulty in his way, and it was thought better to postpone the measure until the question of imprisonment for debt had come under the consideration of the common law commissioners. Lord Althorp, after alluding to the county court bills which he had brought forward, said, he trusted that before long some measure for improving the law relating to the recovery of small debts would be carried into effect.

Capital Punishments.

On the 27th of March, Mr. Ewart, the member for Liverpool, obtained leave to bring in a bill for abolishing capital punishment in the several cases of horse-stealing, sheep-stealing, cattle-stealing, and stealing in a dwelling-house, no person being put in fear therein.

On the 30th of May the following debate took place in the committee on this bill:

On the question that the preamble be agreed to,

Sir R. Peel said that, concurring in several parts of the bill, he thought there was one crime from which the punishment of death was removed by it, which would be attended with some evil. He alluded to the offence of stealing in a dwelling-house. He would admit the propriety of relaxing the extreme severity of the law in the case of sheep and cattle-stealing, as the law was seldom enforced as to the capital punishment in those cases; but he thought the case of horse-stealing was different. It was an offence easily committed, and to which great temptations were held out, by the facility with which the horses might be disposed of; and he did certainly think that the remission of the capital punishment in the case of horse-stealing would be an encouragement to the offence. But he rose chiefly for the purpose of pointing out the risk to the security of property, particularly in the metropolis, by the remission of the capital punishment in cases of stealing in a dwelling-house.

Lord Althorp thought it would be exceedingly objectionable to have punishments in our statute books which were very seldom enforced, as

was the case at present with that against the crime of stealing in a dwelling-house. If there was any personal violence offered, that might be a reason for enforcing the severity of the law, but in cases where no such violence was offered, a lighter punishment ought in his opinion to be awarded. Under these circumstances, he was disposed to try the experiment of remitting the capital punishment of stealing in a dwelling-house when not accompanied with violence.

After a few words from Mr. Hunt and Mr. J. Weyland,

Mr. O'Connell said, that in the course of a long experience, he had seldom known cases of the kind mentioned in the bill followed by an infliction of the punishment of death. He therefore thanked the hon. gentleman for having introduced this measure, as nothing could be more objectionable than to have our statutes nominally denouncing punishments which were not enforced. It served to hold out perfect impunity to particular offences.

After a few words from Sir R. Inglis and Mr. Stephenson (which were not heard in the gallery),

The Attorney-General said the simple principle on which this bill went was, that all great severity of punishment did not tend to diminish crime. The experience of the ablest judges and lawyers, and the most intelligent jurors, went to show that where the punishment was beyond all proportion severe, as compared with the act for which it was inflicted, it had in general the effect of allowing the criminal to escape altogether; for when men found that the life of the party who stole to the value of 6*l.* or 7*l.* from a dwelling-house must be forfeited if he were convicted, they were unwilling to prosecute. This feeling was so general, that many were allowed to escape who would be subject to punishment if the law had fixed that at less than the punishment of death. Under these circumstances, he thought it was desirable to try the experiment of fixing a punishment more proportioned to the offence in the public opinion, by which prosecution would be more certain, and the ends of justice better answered.

Sir Robert Peel said, that the very great increase of crime of late years rendered this subject one of great delicacy, and one which could not be looked upon without anxiety. Secondary punishments were much relied on by some; but in the way in which they were now inflicted they would fall far short, in most cases, of being an effectual check on crime. Suppose a man intrusted with the property of another should make away with it, that man, in general, perhaps, would be a man of good education. Now, to send such a man out as a convict, and have him apprenticed out to a settler, probably an ignorant man, would not, in his opinion, be the proper way to dispose of him. Suppose Fauntleroy, for instance, if he had been sentenced to a secondary punishment and transported,—and suppose that, of the 300,000*l.* or 400,000*l.* of which he defrauded others, he should reserve some 30,000*l.* or 40,000*l.* for his future use—what would be the result when he got out to New South Wales? Why, he might lead a life of learned leisure (for he was a man of learning), and be exempt from all personal restraint; and it was probable that in three or four years the government would be teased with applications for the remission of the remainder of his sentence.

In that case would not the law be defeated? Then it had been suggested that, as a secondary punishment, parties should be exposed to infamy, by being compelled to work and to exposure in the public streets. He, for one, could not concur in the propriety of that kind of punishment. There was something so revolting in that sort of exposure, that he was sure it would beget a sympathy for the criminal, rather than a proper feeling in the justice of his punishment. He had also heard of solitary confinement being mentioned as an effectual secondary punishment. Those who thought so were, he apprehended, not well acquainted with the operation of that sort of confinement on some men. It was a fact, well known to those conversant with prison discipline, that a solitary confinement of six weeks would have the effect, on some men, of rendering them insane for the remainder of their lives. He should therefore pause before he gave to a judge the power of inflicting such a punishment at his discretion, when it was probable that, at the time, he was not at all acquainted with the way in which it would operate. Under these circumstances, he thought they ought to pause before they resorted to secondary punishments, which experience had shown were not very effectual. He was disposed to go along with the supporters of this bill in diminishing the severity of punishment, where it could be done with a reasonable hope of decreasing crime by that means; but there were, as he had before stated, cases in which he could not concur in the removal of the capital punishment. By the bill it was proposed that stealing in a dwelling-house, where it was not accompanied with violence, should not be punishable with death. Now, he would suppose that a plan was laid to rob a house in concert with one of the servants of the owner;—that servant might so arrange that the robbery could be effected, and to a large amount, without rendering any violence necessary, though the parties might be prepared to use it if occasion should require; yet, by this bill, such criminals would escape, while those who used any violence, though they might steal to the value of only a few pounds, would be liable to suffer death. He owned he did not think that the security of property would be increased; on the contrary, he thought it would be greatly diminished by such a change in the law.

Mr. W. Wynn thought that they would be as unwise as their ancestors, who had awarded the same punishment for lifting up a latch tied by a bit of string, or breaking a window and abstracting an article from it, as they did in a case of most atrocious robbery, if they did not make a clear distinction and classification with respect to those crimes which should, and those crimes which should not, be visited capitally. It was desirable that the punishment should remain with reference to certain offences committed during the night, but that it should not extend to the same offences when perpetrated in the day. With respect to horse-stealing, he thought that a limitation should be put to the exportation of that animal, by which the offence might be greatly checked. Particular ports might be named from which alone horses should be exported; and a book might be kept, in which a description of their marks, &c., should be entered. Executions for that offence very rarely occurred: he recollected but one in London. That was the case of Probart; and he suffered for former crimes rather than for stealing the

horse, since the offence was committed under the least aggravation that it was possible to imagine. It was necessary that the law should be altered, when they saw witnesses, jurors, and judges, all combining to deprive it of its severity. The law would be better administered if a lighter and more certain punishment were affixed to certain crimes. He thought that the brand might be introduced beneficially. A culprit would carry that stain with him to whatever country he went; and the fear of such a disgrace would operate as a preventive of crime.

Mr. G. Lamb said, that with regard to the crimes contemplated by this bill, there had latterly been, in general, no increase. Horse and cattle stealing, which was generally effected by gangs, and not by isolated individuals, was not so prevalent as it had been. With respect to privately stealing, there had been some increase, but not a very material one. Those who looked to the papers that were laid on the table would perceive that the increase was very small indeed. With respect to the abolishing of the punishment of death for stealing above the value of 5*l.*, he had, when his hon. friend brought in the bill, doubted the propriety of such a measure; he, however, was now of opinion that such an alteration was advisable. That was the only crime on the statute-book the punishment of which depended on the criterion of value, and he thought that it had better be removed. The right hon. baronet had adverted to the aggravated crime of servants robbing their masters; but still, let them bring forward whatever case they would, the capital punishment depended on the stealing over the amount of 5*l.*, although a robbery of less amount might be attended with circumstances of greater atrocity. It had been suggested, that by raising the value to 100*l.*, and awarding capital punishment only to those who stole to that amount, the difficulty which juries now felt in convicting would be removed. But he objected to this, because he did not think that in any case the value should be the criterion of punishment. If they abolished the punishment of death in every case except in those where the public feeling went along with them, he did not think that they would be going too far. He was ready to vote for the whole bill.

Mr. J. Campbell said, he had paid great attention to this subject, and he was of opinion that the measure now proposed would be found beneficial. It was an error to suppose that when these laws were first framed it was not intended that they should be carried into effect. If they looked to the reigns of Queen Anne, of George I. and II., and the earlier part of the reign of George III., they would find that the punishment under those laws was rigorously enforced. But the change which had since been effected in public feeling rendered an alteration necessary. Horse-stealing had, for a great number of years, been rarely punished capitally: he recollected but one instance. The prisoner was convicted at Stafford; but he had no idea that the criminal would be left for execution, and he heard of his fate with absolute horror. He did not approve of the idea of branding criminals: such a mark would effectually prevent them, however reformed they might become, from mixing in society.

Mr. Lennard said, that the observations which had been made by the right hon. baronet opposite pointed to a great defect in our mode of legis-

lation, namely, that of classing a variety of crimes, differing in degree, under one common denomination. For instance, in burglary it seemed absurd that he who entered a house armed at night, prepared to commit murder, if necessary, in the execution of his purpose, should come under the same class of offenders as a child would, who, after dark, should break a pane of glass, and steal a cake. This was a point well worthy the attention of government, and he hoped that something would be done to improve the laws, by making the punishments enacted by them bear some proportion to the nature and character of the crime. With respect to the particular crime which had been alluded to principally in the course of the debate, namely, the crime of stealing in a dwelling-house, he admitted there were cases of aggravation such as were stated by the right hon. baronet; but still it must be recollected, that the crime was not one likely to lead to personal violence; and as he was averse to making the amount of value a criterion in case of life, he should support the bill in its present state. With reference to what had been stated by the right hon. baronet in regard to secondary punishments, he thought the difficulty of making them effective had been over-rated. In the case of Mr. Fauntleroy, of whom it had been said, that under any system of secondary punishments he would be living in luxury, he would ask, could no law be devised which should prevent that? and, farther, how could these luxuries be obtained, when it was known that by the commission of such an offence as that for which he suffered his property would have been forfeited? He felt a great objection to the present law, on account of the large discretion vested by it in the judge. Practically, the law was exactly in the same state as if it were to be enacted that the punishment for the crimes of horse-stealing, sheep-stealing, and stealing in a dwelling-house, should be transportation, but with a proviso that the judge at his discretion might increase the punishment to death. Would the house consent now to enact such a law? if it would not, why retain a law which in practice did the same thing? Allusion had been made to the difficulty of finding prosecutors; he believed that the bill of his hon. friend tended to remove that difficulty, by making the enactments of the law more conformable to the feeling and humane spirit of the people of this country.

Mr. C. Fergusson expressed his approbation of the provisions of the bill.

Mr. Crampton said, that the cruelty which characterised our statute law formed no part of the common law of the land, and that the only object which would justify the severity of our criminal laws, namely, the diminution of crime, had not been attained in this country.

Mr. Hume was most happy to find that this bill was about being passed into a law. The example of the United States of America should long ago have taught us a wise and practical lesson on this subject. There they seldom executed, except in cases of murder; and the milder punishments which were substituted in the stead of that of death, had been found to produce much better effects than the severer laws which existed in this country. He did not think that secondary punishments had got a fair trial in this country. He was sure that if secondary punishments were more strictly enforced in New South

Wales,—that if, instead of its being in the power of the governor there, or of persons in the Colonial-office at home, to listen to applications on the part of convicts, and to commute, or to remit, their sentences, every individual transported for seven or fourteen years to New South Wales was certain of being kept to hard labour for the whole of that period,—he was sure, he repeated, that if such a system as that were acted upon, secondary punishments would, in most cases, be found abundantly sufficient, and that the punishment of death might be almost altogether dispensed with.

Mr. Ewart concurred in the praise which the hon. member for Middlesex had bestowed on the American system, and expressed his hopes that in a short time we should follow the example of America, and in a great degree abolish the use of capital punishment.

After a few observations from Mr. Hume and Mr. Lamb, on the subject of secondary punishments, the bill went through committee, and, the house having resumed, the report was ordered to be received on the following day.

With regard to the punishment of death in cases of forgery, Dr. Lushington, on the 11th of May, put a question to the attorney-general, and received the following satisfactory answer :

“ I have no difficulty in answering the question of my honourable and learned friend. In consequence of the petitions which were presented on the subject some time back, I took the opportunity of conversing with the lord chancellor on it ; and the result was, that I prepared a bill to remove the punishment of death in all cases of forgery, and that bill is ready to be brought in whenever a proper opportunity presents itself. The last amendment of the forgery laws, made two years back, rendered my task easy, as the punishment of death was then abolished in all but in a few cases.”

Consolidation of the Laws against Coining.

On the 30th of March Lord Auckland, the master of the Mint, presented a bill for consolidating and amending the laws relating to offences against the coin.

This act (2 W. IV. c. 34), which received the royal assent on the 23d of May, repeals forty-five acts of parliament of England, Scotland, and Ireland, the principal provisions of which are re-enacted. Under the new statute, the offences against the coin which were formerly high treason are made felony, and those which were formerly capital offences, no less than seven in number, are now punishable with transportation only. Many minor improvements have also been made, the principal of which is, that the having of counterfeit coin in possession with intent to utter it, which was held by the judges to be no offence, is now made felony, and punished with transportation for seven years.

Sentence of Death.

On the 20th of March Mr. Hughes brought in a bill for extending the 4 G. IV. c. 48, authorising courts to record sentence of death, to London and Middlesex. Under this bill, wherever capital punishment is not intended to be inflicted, sentence of death may be recorded, instead of being passed on the prisoner, as well at the Old Bailey as in other courts. The bill was supported by the attorney-general.

Privilege of Parliament in matter of Arrest.

On the 14th of February Mr. Alexander Baring obtained leave to bring in a bill under the following title, "A Bill for preserving the dignity and independence of the House of Commons, by causing the Seats of Insolvent Members to be vacated, by preventing the Election of Insolvent Persons to serve as Members, and by removing difficulties touching the rights of Creditors against Bankrupt Members." The principal provisions of this bill are—

Process may issue against the person of a member on a judgment, recognizance, decree, &c., or other final proceeding (sec. 1); but previously a demand must be made upon the member, and an affidavit of such demand deposited with the clerk of the house (sec. 2). That after the expiration of a certain number of days from the affidavit being so deposited, the process shall be delivered to the clerk of the house (sec. 3); and if after the expiration of another period the money is not paid, the seat of the party shall be vacated (sec. 4). The member whose seat is thus vacated shall not be re-eligible if the process is still in force (sec. 5). No person in custody under such process shall be eligible (sec. 6). No person who has taken the benefit of the Insolvent Act shall be eligible unless he shall have paid his creditors (sec. 7). Members becoming bankrupt shall vacate their seats, unless the commission or fiat be superseded within a certain number of days (sec. 8). There shall be no privilege in matters of bankruptcy (sec. 9).

Mr. Baring thus stated the former and present state of the law, and the nature of the measure about to be introduced:—

"In former times the privileges of members extended much farther than they do at present. I will not, however, go into any lengthened explanation as to the causes of the various changes that have been made. At one period, no action could be brought against a member of parliament on any account. The law in this respect subsequently became involved in some doubt, and in 1 James I. a declaratory bill was introduced, which allowed persons to bring actions against individuals who had been members of parliament, but were not members for the time being. At a later period, the absurdity and injustice of the law relating to the privilege of parliament again attracted the attention of the legislature, and in the 12th and 13th Wm. III. an act was passed, entitled, "An Act to prevent inconveniences arising from the exercise of the

Privileges of Parliament." By the provisions of this act a member of parliament might be sued in the intervals between the sessions, and then only. As the country advanced in civilisation, a farther change in the law was found necessary, and by the 3d Geo. II. it was enacted, that actions might be brought against members during the sitting of parliament, but that statute reserved to members their privilege of exemption from personal arrest. The next statute on the subject was the 10th Geo. III., which gave a creditor power to proceed against a member, his debtor, by distress and seizure of his goods. Thus, it appears, that parliament has gradually dealt with this question as the state of the law has been shown to be imperfect. No person who examines the subject can fail to perceive that this privilege of freedom from arrest had its origin in jealousy of improper attempts on the part of the crown. In proportion as the law became better administered, and the power of the crown placed within proper bounds, the privilege of members was found inconvenient and prejudicial to the general interests of society. Formerly the power of the crown in courts of justice was very great; but, as that power declined, it is seen how this house, step by step, receded from its peculiar privileges. One of the most remarkable changes in the law respecting privilege was effected by the statute of the 52d Geo. III., which enacts that if a member becomes a bankrupt, and does not pay his debts within a limited time, he must vacate his seat. The preamble to that bill is to the following effect:—"Whereas it is highly necessary, for the dignity and independence of parliament, that members of the House of Commons of the United Kingdom becoming bankrupts, and who do not pay their debts in full, shall not retain their seats."

"It is now necessary for me to state the change which I propose to effect in the law as it at present stands. The effect of the bill which I shall move for leave to introduce, will be, to deprive members of the privilege of freedom from arrest, in the event of judgment being given against them. I do not mean to destroy the privilege from arrest on *mesne* process; for it often happens that a man is taken by surprise by his creditor for the sake of vexation and annoyance; and we often hear of cases of arrest by this process, which, on inquiry, turn out to be entirely groundless. I therefore mean to propose, that a member of parliament, against whom a judgment shall be obtained in a competent court by any creditor, and who shall not satisfy the same judgment within the period of three months after it is given, shall forfeit his privilege of freedom from arrest."

A short debate ensued, in which the measure was supported by Mr. Croker, and opposed by Sir Charles Wetherell and Mr. Lambert. The bill was read a second time on the 30th of May, after a brief discussion, and a division of 38 to 4.

ART. XII.—PARLIAMENTARY PAPERS, INTELLIGENCE, &c.

Returns relating to the Court of Bankruptcy.

Return of the number of issues tried by the Court of Review in Bankruptcy ; of the number of matters heard by that Court upon *vivâ voce* evidence ; of the number of days the Court has sat, and the number of hours on each day ; of the number of petitions and matters heard by the Court, distinguishing such as had previously been decided by the Vice-Chancellor, and such as were matters heard *ex parte*, or not opposed ; of the fees received by the different Officers of the Court, distinguishing those enumerated in schedule 1, of the act authorizing the establishment of the Court, from those enumerated in schedule 2 ; of the duties performed by the Deputy-Registrars of the Court ; of the duties performed by the Secretary, and the number of hours of each day in which he had been engaged in the public duties of his office, and of the amount of fees received by him or his clerks ; of the number of attendances of any of the Judges of the Court as Commissioners ; of the number of matters now ready for hearing in the said Court of Review ; of the amount of fees received for the admission of Solicitors of the said Court, and the purposes to which the same have been applied ; and also of the names of the persons appointed official assignees.

No issue has hitherto been tried by the Court of Review in bankruptcy.

No matters had been, on the 19th day of March, heard on *vivâ voce* evidence ; but two matters, which were then depending in the Court of Review in bankruptcy, and had been before then appointed for hearing, have since been heard by that court, and determined on *vivâ voce* evidence.

The said Court had, on the said 19th day of March, sat forty-two days ; but there are not any means of ascertaining the number of hours each day of its sitting, no memorandum having been kept thereof.

One hundred and fifty-eight petitions and other matters were heard by the said Court of Review, to the said 19th of March inclusive ; of which two had been previously decided by the Vice-chancellor, and 111 were *ex parte*, or not opposed.

The judges have frequently attended at the Court of Commissioners of Bankrupts, in Basinghall-street, with a view to assist the commissioners, and sometimes on appointments ; but on one occasion only has a judge actually sat as Commissioner.

The number of matters which on the 19th of March stood for hearing in the Court of Review, on that and subsequent days, was thirty ; of which eight stood for hearing on that day.

The sums received for the fees enumerated in the second schedule of the act, authorizing the establishment of the Court of Bankruptcy, to the said 19th of March inclusive (comprehending 136*l.* 6*s.* for the filing of affidavits for procuring the admission of attorneys and solicitors), amount to 486*l.* 2*s.* 4½*d.*

The fees received for the admission and enrolment of attorneys and solicitors to and upon that day, exclusive of those for filing their affidavits, amount to 681*l.* 10*s.* The expences of the affidavits and enrolments, and the necessary books for entering the residences of the attorneys and solicitors admitted in the Court of Bankruptcy, up to the same day, is 67*l.* 17*s.*; after payment of which, there will remain a balance of 613*l.* 13*s.*; which, by the rules made by the judges of the Court of Review, on the 12th of January last, already returned to the honourable the House of Commons, is directed to be applied to the same purposes as the fees received under the second schedule of the 1 & 2 W. IV. c. 56.

The names of the persons hitherto appointed official assignees are, George John Graham, Robinson John Kitchener, Robert Waithman the younger, Peter Harris Abbott, David Cannan, James Foster Groom, George Lackington, George Green, Patrick Johnson, William Turquand, Alexander Brymer Belcher, James Clarke, Edward Edwards, William Tennant, Charles Turner, William Whitmore, George Gibson, Moses Asher Goldsmid, and Joseph Lowe; three of the first eighteen of these gentlemen are attached to each of the six commissioners of the court; but Mr. Joseph Lowe has not been attached to any Commissioner, so as to enter upon his official duties; nor will he be so attached, until it is found necessary to add to the present number of acting official assignees.

In consequence of the said order of the honourable the House of Commons, the deputy-registrars of the Court of Bankruptcy respectively have been required to make a correct statement, for the information of that honourable house, of the several matters and things concerning them mentioned in the said order, and have for that purpose communicated the following statements:—

Francis Gregg, one of the deputy-registrars of the said Court of Bankruptcy, attached to the Court of Review, states, that the duties of that office, performed by him, have been as follows:—Attending upon and assisting the judges of that Court during its sittings; and afterwards, when the Court rose early enough to enable him to do so, and on days when it did not sit, attending at the office in Basinghall-street; inspecting the petitions brought there, and signing the *fiats* for answering them; examining bankrupts' certificates, and the documents accompanying such certificates; conferring with attorneys, solicitors, and their clerks, relative to matters heard or depending in the Court of Review; drawing up orders of the court, when required, and generally assisting in the business of the office.

John Vizard, the other deputy-registrar of the said Court of Bankruptcy, attached to the said Court of Review, states, that the duties of that office, performed by him, have been as follows:—Attending at the Registrar's office in Basinghall-street, daily, from ten to four o'clock, there receiving and inspecting all petitions presented for hearing in the Court of Review, and signing the *fiats*, for attendance on them; keeping a daily record of such petitions, as they are to be brought on for hearing, for the use of the court, and supplying each of the judges with a copy (left by the solicitor) of every petition, two days prior to the day for hearing; receiving all certificates of bankrupts' conformity in the kingdom, when brought for allowance; examining the same, and the several

affidavits, powers of attorney, and other documents filed therewith, to see that the rules relating thereto, as prescribed by statute and the general orders in bankruptcy, have been complied with, and signing the advertisements for allowance to authorise their insertion in the Gazette, preparing the allowance by the Court of such certificates at the expiration of the time specified in the advertisements, unless stayed by petition in mean time; receiving all applications and papers for drawing up orders on hearing; furnishing the registrar with the papers to enable him to draw the minutes of such orders, and when drawn, attending the solicitors on both sides, on their meeting, to settle the minutes; making the orders ready for engrossment, and afterwards passing and entering them; receiving all applications for orders of course; examining the affidavits and other documents filed in support of such orders; drawing up the orders, getting them engrossed, passing and entering them.

Francis Charles Parry, Daniel William Richardson, William Cheek Bousfield, John Campbell, William Henry Whitehead, and John Barnes, the six deputy-registrars attached to the Commissioners of the said Court of Bankruptcy, state, that the duties of their respective offices, performed by them, have been as follow:—

1. To attend upon and assist the Commissioners, to whom the said deputy-registrars are respectively attached, in all their sittings; to examine the depositions and other documents presented to the commissioners, and ascertain their correctness in point of form, and examine the exhibits referred to, and ascertain that they are correctly set out.

2. To examine all affidavits sworn before the Commissioners.

3. To take down the examinations of various parties summoned by the Commissioners where no solicitor attends, and on other occasions, when directed by the Commissioners.

4. To examine and authenticate all advertisements for the Gazette, which come before the Commissioners.

5. To prepare and fill up the summonses to the solicitors and assignees under the old commissions, for the purpose of examining their accounts.

- A.* To assist the Commissioners in taxing solicitors' bills, in all matters in bankruptcy depending before the Commissioners.

- B.* To examine the proceedings under commissions and *fiats*, and the necessary affidavits and documents for obtaining the bankrupts' certificates, prior to their being signed by the Commissioners.

- C.* To keep minutes of the proceedings of each daily sitting of the Commissioners; to arrange the several proceedings and documents under commissions and *fiats*, and to attend to the various searches therein, and references thereto, which are constantly required.

- D.* To keep an account of the fees payable under the 47th section of 1 & 2 William IV. c. 56; the Court of Review having directed the deputy-registrars to receive and pay them into the Bank of England, and to file the receipts with the accountant-general.

The six last-mentioned deputy-registrars further state, that the duties, No. 1, 2, 3, 4, and 5, are considered public, and require their daily attendance; and that the duties *A*, *B*, *C*, and *D*, occupy their time not devoted to attendance on the Commissioners, and frequently the whole evening.

The Lord Chancellor's secretary of bankrupts is not an officer of, or attached to, the Court of Bankruptcy; but in consequence of a copy of the order of the honourable the House of Commons having been forwarded to him, the said secretary, not doubting but that the said order referred to his office, states, for the information of the honourable the House of Commons, that as the duties of that office are multifarious, and not limited to hours or to attendance at his office, it is impossible to make a return in the precise terms of the order.

The said secretary further states, that the duties of his office consist of a general superintendence of all the business directed by the several statutes to be transacted at the office set apart for the purpose, and which require and have had his daily attendance there; that to these are to be added attendances in Court, when any matters in bankruptcy are discussed there; and very frequent attendances upon the Lord Chancellor personally at the House of Lords, or at his own house, sometimes in the morning before his lordship goes into Court, and at other times late in the evening, upon various matters of business. The said secretary further states, that he, like the Lord Chancellor's other secretaries, is one of his lordship's attendants at the House of Lords, and on occasions of state, although these attendances occupy but a small portion of his time.

The said secretary further states, that the amount of fees received by him and his clerks, under the late act, are as follows:—For *fiats* received to the 29th of March last, under the 45th section of the act, and which has been paid by the said secretary into the Bank of England, as required by the act, the sum of 4,330*l.*; for fees under the 48th section and the 1st schedule to the act, to the 26th of March, and which has been applied for the purposes mentioned in such section, the sum of 179*l.* 13*s.* 8*d.*, out of which he has paid for part of the expences of the office, 111*l.* 3*s.*

EDWARD LAWES,

Chief Registrar of the Court of Bankruptcy.

Chief Registrar's Office,
Basinghall-street, April 6, 1832.

In addition to these returns, a return was ordered by the House of Commons, on the 4th of April, "of the duties performed by the present and former secretaries of bankruptcy, before the passing of an act constituting a Court of Bankruptcy, &c., and of the comparative attendance of the secretary at his office before and since the passing of the act," &c.

We do not give this return in full, as it chiefly relates to the duties of the secretary previously to the passing of the new act, but the following passage refers to his labours since the establishment of the Court of Bankruptcy:

"I do not find the duties of the secretary diminished by the establishment of the new Court; the business carried to that Court from his [my] office being, with the exception of the allowance of bankrupts' certificates, that only which resulted from the attendance on the Vice-chancellor, and consequent on orders pronounced by his Honour; and the

returns show that those duties were performed by the deputy-secretary, whose office is abolished by the late act."

The duties referred to by the secretary are those connected with the issuing and superseding of fiats, the jurisdiction as to which ought, as we have contended, to have been transferred to the new Court. Why, we again ask, should not the four registrars attached to the Court of Review perform these duties?

INTELLIGENCE, &c.

Lord Brougham's Speech on taking leave of the Bar.

At the conclusion of the business of the court on the 12th of May, Lord Brougham stated that he would give judgment in several cases after he had quitted the Great Seal.

"I trust," said he, "after examining all the cases, I trust none have escaped me which I shall not be able to dispose of within a very few days. And I do hope that I shall not leave to those who succeed me the task of re-hearing, and to the parties the expence and delay consequent on a re-hearing, from their not being disposed of. The motions which now remain to be disposed of, and which are set down in the paper, are eight, or six—eight, I believe, are now in the present paper. But, of course, the motions, I find, are of a date prior, which could have been heard prior to the 1st of September, when the Court rose last summer. Those motions, as it now appears, beyond those heard since that period, amount to somewhere about fourteen or fifteen. The motions which remained at Christmas amount to nearly the same number. The appeals at Christmas which were set down amounted only to seven or eight, and those which were ready for hearing to four or five. I doubt very much whether any one of those could have been, without inconvenience, heard. But there are a considerable number of appeals and re-hearings more—I think upwards of thirty. I have been exceedingly sorry that there should have been that number, but I can only say that it is no fault of mine. I have been exceedingly anxious to get through them with the same dispatch which, by the kind assistance of the bar and the parties, I was enabled to get through them during the last summer. But, undoubtedly, my health suffered much from the labours of that year—1831. And though those that remained were entirely got rid of, I have unquestionably been prevented since that from giving as much labour on the business of this Court as I could wish, though I have certainly intermitted my legislative labours for the purpose of bestowing all the strength which I had on the business of this Court; notwithstanding, I have not been able to satisfy myself since Christmas, for the reasons which I have mentioned. I may venture to state that I could, over and over again, have been perfectly excused for not keeping the field, if I may so speak; though I might have had very good excuses for not coming into Court at all, I felt it my duty so to do, and it is a very great satisfaction to me that I have been able to leave the business in the state I do. I had hoped to have been able to perfect an arrangement without application to the legislature, which would have produced, in my opinion, the salutary and most beneficial effects of an act for certain

purposes, for simplifying some of the most important business of jurisdiction, composed of the three heads of the equitable jurisdiction of Westminster Hall—voluntarily sitting. It is no fault of mine that that wish has not been accomplished. I hope and trust I shall live to see it accomplished, as I hope and trust I shall live to see another wish accomplished, which, it is known to many of my colleagues, has long been near to my heart—to see the great and necessary improvement in this country of the equitable jurisdiction of the Chancellor severed from all his political functions. Upon quitting this Court I should, in ordinary circumstances, feel nothing but the pain of parting with those from whom, having always received unvaried respect and kindness, I certainly feel my tribute of kind and respectful thanks most justly due. But on my voluntary retirement from office, and after I am separated under the only pain which it gives me—I mean, of the separation that I have mentioned—I am supported by the principles which dictate the course I pursue—I am more than supported. The personal feelings to which I have adverted are lost in the public sense of duty under which I act, and which compels me, I trust without any undue feelings of pride, to regard the abandonment of power to the commands of duty, not as a misfortune, but a glory.”

“His lordship,” say the public papers, “delivered the above in the most emphatic and energetic manner, which no one but those who were present can conceive.”

There are some highly important subjects glanced at in this speech, to which, on his return to office, we may hope to find Lord Brougham's attention directed. It would, however, have been more satisfactory if, in laying down the seals, the Chancellor could have spoken of something beyond contemplated improvements—of some one abuse remedied—some one reform carried into execution. Of the two contemplated changes to which he adverts—the formation of a new tribunal, to consist of the heads of the Equity Courts—and the separation of the political and judicial functions of the Chancellor, the latter only appears to be of an unquestionable character. Were all the seats on the Equity Bench properly filled, we see no reason for compelling the judges to sit in conclave. The separation of the political and judicial functions of the Great Seal is a measure which must take place. When Lord Keeper Williams, in the reign of James the First, was compelled to sit at six in the morning to get through his duties, and Lord Hardwicke till after midnight, it is quite obvious, that at the present day no man, however stupendous his powers,—no, not even Lord Brougham, can adequately discharge the united duties of his office. We shall speedily advert to this subject at greater length.

Conduct of Magistrates.

If a record were to be kept of the follies and extravagancies of magistrates, it would present, at the conclusion of the year, a sin-

gular picture of judicial indiscretion. There would almost seem to be something in the bench which takes away a man's better sense, and compels him to expose himself. The petty power which the Justice possesses turns his head. At his nod prisoners tremble, at his beck constables bow, till at last he breaks out into such scenes as the following, which occurred a little time since at Union Hall.

A BONE-BREAKING MAGISTRATE.—A bill-sticker charged a tradesman, named Powell, with an assault. The bill-sticker was posting a bill against Mr. Powell's house, when Mr. Powell came out, tore the bill down, violently beat the complainant with the sticks used in posting the bills, and then broke them.—Mr. Curling, the magistrate, thought Mr. Powell had acted very properly; and, if a bill-sticker came to his house in that way, *he would break every bone in his skin.*—Mr. Wedgwood, the sitting magistrate, differed from Mr. Curling: Mr. Powell had no right to strike the bill-sticker. He had his remedy against the bill-sticker's employer. He would advise the complainant to take out a warrant against the defendant for wilful damage in breaking his sticks. Perhaps, however, it would be better for Mr. Powell to end the matter by making a small recompense to the defendant.—Mr. Curling. I desire Mr. Powell to do no such thing. *I would break a vagabond bill-sticker's bones*, if he came to placard my house.—The bill-sticker, by Mr. Wedgwood's advice, then made a charge of wilful damage, and valued the broken sticks at three shillings, and Mr. Wedgwood said he should fine Mr. Powell that sum.—Mr. Curling: "Then I advise Mr. Powell not to pay the fine, and I will bear him harmless. What! is a man's house to be stuck with bills by these vagabonds, and then is he to be fined for breaking the implements by which his property was defaced? This is too bad."—Mr. Wedgwood said Mr. Powell had no right to break the sticks; and, if the fine were not paid, he should commit him for a week.—Mr. Curling: "If I were Mr. Powell, I would appeal."—The magistrates' clerk said the act did not allow an appeal.—Mr. Wedgwood: "Are you prepared to pay the fine, Mr. Powell?"—Mr. Curling, with warmth: "This is a most arbitrary decision, and I tell you so to your face, Mr. Wedgwood. Mr. Powell was justified in doing what he did, under the circumstances. These vagabond bill-stickers *have been at my palings*; but, if I catch them at it, *I'll not leave a whole bone in their skins.*"—Mr. Wedgwood: "If Mr. Powell had been indicted for this violent assault, I am sure he would have been imprisoned for a month."—Mr. Powell here said he would end the matter by paying the fine. When the parties were leaving the office, Mr. Curling called after the bill-sticker—"Don't come near me, young gentleman, or *I'll break all the bones in your skin.*"

"The policy of the law," says a periodical writer, observing on the above, "is to take out of men's hands the redress of their own wrongs; and we see how this respectable magistrate would inculcate it. The proportion of punishment he would deal out to the offence (breaking every bone in a man's skin for disfiguring a wall), shows the discretion that may be expected in his adjudications. The explanation of his desire for the bone-breaking of bill-stickers by the circumstance that they had been at his palings, discovers the motives of self-concern which may out-

rageously move the breast of justice. His conduct to his colleague, his temperate language, his mild resolves, his becoming recommendations, altogether illustrate the judgment which is exercised in the selection of magistrates."

An instance of the mode in which the magistrates of Ireland sometimes attempt to uphold the dignity of their office, appears from some proceedings in the House of Commons, relative to the punishment of a person of the name of Murphy. Mr. Ruthven, the member for Downpatrick, brought the matter before the house, and made the following statement :

"On the 13th of last December, a man was charged before these magistrates with stealing turf, when it appeared that Murphy, who is a respectable farmer, was present, and he made use of some observation relative to the conduct of Mr. Stoney. This excited some angry feelings, and strong language was made use of, when the magistrates ordered him to be put in the stocks, before the court-house, where he remained half an hour. He was then made to carry the stocks to the market-place, where he was also put in the stocks for half an hour, and two soldiers stood on either side of him with drawn bayonets. He was then made to bear the stocks back to the court-house. On both occasions, a large label was affixed to Murphy's back, with these words, in large characters, inscribed on it: 'For insolence to the Reverend Mr. Stoney.' After he had conveyed the stocks back to the court-house, he was released, and allowed to go away."

Mr. Stanley admitted that the facts of the case had been correctly stated, and said that they had been brought to the knowledge of the Irish Chancellor, who thought that it was not such a case as called for the dismissal of the magistrates; but that an intimation should be conveyed to them, that their conduct could not be approved of.

Society for the Abolition of Capital Punishments.

We are desirous of directing the attention of our readers to a society formed in the year 1829, for diffusing information on the subject of capital punishments. Committees have been formed in London, in Edinburgh, and in Dublin, to carry the objects of the association into effect, and several small tracts on the punishment of death have already been published under their auspices.

On the 3d of June a public meeting was held at Exeter Hall in furtherance of the objects of the society, and was numerous and respectably attended. Lord Nugent, in the absence of the Duke of Sussex, took the chair, and the meeting was addressed by that nobleman, and by Mr. Basil Montagu, Mr. Strickland, M. P., Mr. O'Connell, Mr. Ewart, M. P., Mr. J. S. Taylor, and other gentlemen. We hope these proceedings will be the means of calling public attention generally to this subject.

THE JURIST.

NOVEMBER, 1832.

ART. I.—REGISTRATION.

The question of Registration has now been before the public for more than three years. Had we been disposed to enter upon its investigation as advocates, we should long since have taken it up. But whilst we do not disclaim it, either as a duty or a pleasure, to endeavour to give an impulse to legal reform in all its departments, we regard it as more especially our province to collect and weigh the evidence on both sides, and to contribute our best exertions towards assisting the profession and the public in coming to a right conclusion upon the various important changes which are suggested in the present day. This impartial course of proceeding is more especially called for on a question like Registration, on which much diversity of opinion has been expressed, and in reference to which we have often observed that the prejudices, if not the interests, of the combatants, have been stronger than their arguments. This, we shrewdly suspect, is the real secret both of the length and apparent strength of the contest: for although we have ever been anxious to examine the question in all its bearings, and especially not to lose sight of its difficulties, real or apparent, it has always appeared to us to be in itself a very simple and easy question, hardly, in fact, constituting one of those "*juris nodi et legum ænigmata*," referred to in our title page, and which it is the duty of the Jurist to solve.

In order that we may present the matter fairly and distinctly to our readers, and at the same time do justice to the talent and learning which have already been brought to bear upon it, we propose taking a brief survey of the principal publications which have already appeared; not, indeed, exactly by way of *critique* upon them, but rather as a history of the question, and, as we have hinted, by way of summing up the evidence.

The establishment of a Register had been incidentally alluded to by Mr. Butler in his Annotations on Coke upon Littleton, and by Mr. Preston in his Treatise on Abstracts. It was also touched upon by Mr. Miller in his book on the Civil Law, by Mr. Humphreys in his valuable work on Legal Reform, and by Sir Edward Sugden in his reply to it. Mr. Butler, Mr. Miller, and Mr. Humphreys, were all decided friends to the measure; Sir Edward Sugden was as decidedly opposed to it, and Mr. Preston was measurably of both opinions.

The high character of Sir Edward Sugden, both as a juriconsult and an advocate, entitles even his doubts to respect, and his unsupported opinions to attention. Of argument we find but little on this subject in his pamphlet; but when he says, "I have often directed my attention to the expediency of a general registry, and my settled conviction is, that it would not be advisable," it becomes our duty to point the attention of our readers to the fact, as a part of the evidence to be weighed in deciding the present issue.

Passing on from the above incidental notices of the question, we find the first full and comprehensive view of the subject in the valuable Suggestions sent to the Real Property Commissioners by Mr. Tyrrell, and printed, though not published, by him early in the year 1829.

We can hardly better launch the question than by extracting from that work the following introductory remarks:—

"The expediency of a general register to supply the present defects in the evidence of titles, is perhaps the most important of all the subjects which require the consideration of the commissioners. On account of the advantages of ascertaining, with certainty and facility, the safety of a title, and of the amendment in the modes of assurance which *might* be afforded if a register were established, it would be attended with more extensive consequences than any other alteration which can prudently be suggested in the laws of real property.

"The partial registers which at present exist by virtue of local acts in Middlesex, Yorkshire, and the Bedford Level, have sometimes been considered to produce more evil than good. But I cannot avoid thinking that the objections to them arise, not from causes which are essential to the nature of a register, but from the inconvenient regulations of the present acts, and the consequent difficulty of making accurate searches; more especially from the interference of equity in giving effect to unregistered deeds, on the ground of notice, by which it has repealed the most beneficial provisions of the acts, and increased some of the evils which they were intended to remedy. And I entertain a confident opinion that the establishment of a well digested register or enrolment, properly regulated and protected from the interference of equity, would afford advantages which would greatly overbalance its inconveniences and expence, and would confer an essential benefit on the country.

"The safety of a title can never be ascertained with certainty without

a general register ; for it is impossible, by any other means, to afford protection against the suppression of deeds, which is one of the most usual and important causes of the insecurity of titles.

" Instances frequently occur, in which purchasers are deprived of their estates after the title has been cautiously investigated, and every possible means of discovering defects in it have been resorted to ; and it may be useful to mention some of those which have been recently met with in practice.

" An apparently good title of eighty years appeared upon an abstract : it commenced with a will by which the estate was devised to a son of the testator, his heirs and assigns ; and mortgages and other documents followed the will. After the purchaser had enjoyed the property for a few years, it was discovered that the original testator had been entitled under a lease for three lives, of whom the survivor was recently dead ; and the estate was recovered by a person claiming under the lessor. The lease had been mislaid, and was probably unknown to the person who sold the estate.

" The owner of two adjoining estates sold one of them, and afterwards devised the other, by the description of 'all his estates in the parish ;' the devisee lived about thirty years, and devised his estates by a similar general description ; the estate which had been sold became the subject of arrangements with creditors, and the title was unsafe. It came into the possession of the last devisee of the other estate, by his paying off the first incumbrancer ; and he afterwards sold the two estates, suppressing the sale made by the original testator, and all the subsequent deeds, and showing an apparently good title to both of them, by means of the two wills.

" A seller suppressed a settlement he had made on his daughter's marriage, under which he was only tenant for life ; the purchaser, who bought by auction, found that the seller was a person of indifferent character, and heard a rumour that the estate was settled ; but the seller made an affidavit that no settlement had existed. The daughter and her husband were both dead, and the children were infants ; and, after a diligent inquiry, no certain information of any settlement could be obtained. The purchaser was obliged to complete his contract, and after the seller's death the settlement was produced, and his grandchildren recovered the estate.

" A person entitled to an estate in fee simple, having become tenant for life of another estate, obtained a private act of parliament for effecting an exchange of the two estates. He then sold the estate which had been settled, by virtue of the title which he acquired by the act, and afterwards sold his original estate by avoiding to give any notice of the exchange or the act.

" An estate was mortgaged, and the evidence of an outstanding term, which had been assigned by deeds separate from the conveyance, was suppressed. The estate was sold to a purchaser who was ignorant of the mortgage ; and, in consequence of the term having been assigned to a trustee for him, the mortgagee was deprived of his security.

" A mortgagee obtained an assignment of an outstanding term, under a limited administration ; a second mortgagee, without notice of the first,

discovered that the term had some years before been assigned by the executor of the trustee; and, by obtaining an assignment of it, he gained a priority over the first mortgagee.

"An estate, subject to a term for securing a small portion to a child who was under age, was mortgaged to five different persons, each of whom supposed that his debt was the only charge, except the portion. The trustee of the term was in South America, and the deeds were at his banker's. The child came of age, and the trustee died abroad. The fifth mortgagee (who was a near relation of the mortgagor) paid off the portion, and obtained an assignment of the term from the executor of the trustee, and thereby defeated the security of the four prior mortgagees.

"An attorney obtained for the owner of large estates 3,000*l.* on mortgage of one of his outlying farms. The owner having occasion for more money, employed the attorney to sell the farm. He sold it to the tenant for 4,600*l.*, without mentioning the mortgage, and retained 3,000*l.* out of the purchase-money, and told his employer that he had discharged the mortgage. The purchaser was obliged to obtain 2,500*l.* on mortgage, to enable him to complete his purchase. Both the mortgagee and purchaser had only a covenant to produce the title-deeds. A few years afterwards, the attorney became a bankrupt, and it was discovered that he had applied the 3,000*l.* to his own use, and continued to pay the interest to the mortgagee. In the mean time the seller had died, and his personal estate had been applied in payment of his debts; and the mortgagee not having required a bond, had no remedy against his real estates. The purchaser, who was a farmer with a large family, was obliged to pay both mortgages, and was ruined."

The learned author then proceeds to state some of the principal arguments and authorities in favour of registration, and in a clear and popular manner to combat the leading objections to it. But, in this early stage, the latter task was not so easy as it has been since rendered by the publication of one or two tracts adverse to the measure, which have enabled its advocates better to understand the precise nature of the opposition with which they have to contend. Mr. Tyrrell does not dismiss the subject without offering some valuable suggestions respecting the details of the Register Office, many of which have since been adopted by the commissioners. It is not, however, to be wondered at, that, in this respect, much should have been left both to add and to correct. We shall not now farther notice his proposals than by saying that he is a strong advocate for the use of maps and plans, as connected with registration, a subject to which we shall, in all probability, have occasion to revert hereafter.

Not long after the appearance of the work which we have just noticed, the consideration of the whole subject was brought still more closely under the notice of the professional public, by the circulation of 164 Questions on Registration, by the Real Property Commissioners. Some of the questions are perhaps irrelevant, and others not very well directed; and the appearance of so great

a number of queries, which were by some persons regarded as proof of the doubtfulness, or at all events of the difficulties, incident to registration, was far from creating, in the first instance, a favourable impression of the important measure of legal reform which the commissioners had selected for the second grand division of their labours.

When we reflect, however, upon the impartiality which this course of proceeding indicated,—upon the great variety of lights in which those questions were calculated to place the subject,—upon the numerous points of practical importance connected with it, to which they directed the attention of the profession,—and, last but not least, upon the many valuable dissertations on both sides to which the circulation of those questions immediately gave rise, we cannot refrain from expressing our opinion that the commissioners thereby rendered a most important service to the public.

Their first fruits were the spirited and valuable pamphlet of Mr. Coote. This gentleman, whose professional experience and reputation give great weight to his opinion, was a decided opponent of registration; and, as his pamphlet contains some of the most plausible arguments against the measure, an outline of its contents is almost essential, as a part of our historical sketch of the question. After remarking that his objections apply to the principle of the measure, he very fairly states the actual question to be, “whether it is better that titles to land should continue under the safeguards at present afforded by the law, or be transferred to the protection of a general registry of all instruments relating to real estates, to which recourse by way of search may be readily had.” p. 3, 4.

His description of the frauds which may be committed in the titles to landed property is particularly striking:—

“Instances of fraud,” he observes, “will from time to time occur. An heir at law may conceal a will containing a devise of his ancestor’s property, and may make a pretended title as heir, claiming by descent. A dishonest man may conceal a settlement made on his marriage, by which he is reduced to a mere tenant for life, and may produce his title as owner in fee. A vendor may knavishly conceal grants of annuities, which being secured on an estate of inheritance, may not have required enrolment, and of which, consequently, no information could be gained. Old deeds of family settlements may be kept out of view, under which are existing unbarred entails, or other estates in remainder or reversion. Other cases of gross fraud may be imagined, and to guard against injuries like these, the ingenuity and the learning of lawyers have been constantly at work.” p. 7.

He then draws a contrast between the existing system of protection by attendant terms, the advantages of which he sketches

by the ostensible enjoyment of property, have (perhaps in many cases incautiously) trusted young men to a greater extent than their possessions or their prospects warranted (and in the ruin of the creditor and of his family are commonly involved the honest labourers and mechanics in their employ); but this unlimited credit (the accepting of which is in itself an act of dishonesty) is an encouragement to idleness, gambling, and every other vice, and constantly leads to destruction and disgrace.*

"If a man's actual condition and expectations, and the circumstances of those by whom he is supported (so far as they are dependent on real property) can be known, it will be difficult for him to obtain unlimited credit for his wants and luxuries. At present no means of obtaining this knowledge ordinarily exist, and lenders of money and tradesmen (trusting to appearances or representations which they could not ascertain to be false) sustain heavy losses.

"This knowledge will also operate as a protection to those whom circumstances oblige to have recourse to raising money. While it will be a check on improvident credit, it will keep men out of the hands of usurers, for they will be enabled to give that security (according to the nature of their interests and their expectations) which they cannot now warrant, and thus raise money on reasonable terms.

"Extravagance and consequent ruin will be checked, and means of supplying reasonable wants afforded.

"That registration will entirely prevent this,—that improvidence, dishonesty, fraud; and the consequent ruin of innocent and unfortunate, as well as guilty individuals, will cease, on its institution, cannot be expected; but if these be checked to any extent, the establishment of it must be a public benefit.

"On the subject of commercial credit I would observe, that commercial men in this country have frequently, by the ostensible possession of property, obtained credit to a greater extent than was justifiable.

"It is notorious that many bankers who have been involved, and have either become bankrupts, or compounded with their creditors, (though in the actual enjoyment of great estates), in some instances possessed only life interests or determinable interests in them, or they were the mere bailiffs of their wives, whose property the estates were; and in other cases they had so incumbered their estates that they were not more than sufficient to satisfy the incumbrances, or a part of the incumbrances affecting them. In many instances, bankers have made great investments in land, and thus, having the appearance of increased wealth, and acquiring by it more extensive influence, their trade, and, necessarily, their obligations have increased; and when from extravagance, over speculation, and improvident investments and advances, difficulties have arisen, it has commonly been found that these purchases of land have been made with the property of others, and that the bankers, in reality, did not possess means nearly adequate to the investments they made. Of this the public could, with certainty, know nothing; confidence, founded in a great degree on the acquirement and enjoyment of estates, was reposed, and in many cases (there being in the district no other cir-

* See Mr. Wilbraham's observations in *Lord Chesterfield v. Janssen*, 1 Atk. 313.

culating medium except banker's notes) great losses were unavoidably sustained.

"When banks stopped, and their affairs were looked into, it was found that (so far as the general creditors were concerned) the ostensible property of the bankrupts was not available, or only to a small extent, for the benefit of those creditors. Since the alteration of the laws respecting small notes, evils so extensive are not likely to occur, but those that may arise, if the present system continue, and which might in a great measure be prevented if a register existed, are sufficiently important to make it expedient that they should, if possible, be guarded against. During the late panic (as a recent period of distress was called), when every day's paper announced the failure of some bank, it was suggested in parliament (but the suggestion was not adopted) that every bank should find security as the condition on which it should be allowed to issue notes. Registration would, in every case in which the members of a bank possessed real property, have the same effect. The extent of that property, the banker's interest in it, and the charges affecting it, would be known to the world, and no disposition of that property would be made which would not become notorious.

"I am very little impressed by the objection that the obligation to register securities would occasion the ruin of individuals, by the disclosure of their necessities.

"It is supposed, that a knowledge of this would cause a run on the banker, a withholding of confidence in him, an abstraction of business from him. It is possible that in many cases this would happen, but I believe it would rarely happen in any case in which confidence might continue with a reasonable prospect of security.

"It will be found that where individuals have come forward to assist mercantile men who were in difficulties, or their affairs have, for a while, been carried on under the inspection of creditors (though sacrifices have been made), a loss of business to any great extent has not been the consequence. It is perfectly notorious, and was so at the time, that during the period to which I have referred, many bankers (who did not stop and have since continued their business) called in and disposed of their securities, and raised money by all means in their power.

"An individual may by his necessities be compelled to convert his property and his stock into money, at an apparently disadvantageous period, and thus bring distress on himself; but is it not more just that this should happen, and that his creditors should be paid, than that he should go on speculating, and increasing (as is often the case), not so much his own distress as the number of his creditors and the amount of his debts?

"In the case of a banker whose assets and securities are not likely to become more valuable by delaying to convert them into money, and to get them in (and this is the case to which the objection principally applies), I would particularly observe that his creditors are more worthy of consideration than himself. If he has involved himself, it has been through indiscretion or over-confidence, for which he alone should be the sufferer, and the sooner his affairs are adjusted, the less likely are his creditors to be losers.

"The objecting to registration, because it may injure commercial credit, is only looking at one side of the question, and considering only the interests of one party. As far as the public are concerned (and it is as a public measure that the policy of it is to be considered), surely the interests of creditors are to be regarded in preference to those of debtors.

"If registration have the effect of checking credit, I believe this will be beneficial. It will not only be a protection to unfortunate creditors, but it will be a check on that inordinate extension of trade and speculation beyond a man's capital, which have of late years occasioned the ruin of thousands.

"But it seems to me that bankers, particularly those in the country, are interested in the establishment of a register. It is not only necessary that they should frequently make advances, but a portion of their capital is invested in mortgages. A register will enable them to do this with security and confidence, and they will have means of ascertaining whom, and to what extent, they may trust." p. 37—44.

There is one part of Mr. Walters' pamphlet with which we cannot entirely concur. He thinks that registration will greatly tend to shorten deeds, by rendering recitals unnecessary, which are now introduced in order to supply secondary evidence of a deed, should the original be lost; and that, as the loss of deeds would be guarded against by a register, the above precaution might be laid aside.

This is an argument which we have very often heard advanced by the patrons of the measure; but we cannot, consistently with the impartiality which we are desirous of maintaining, view it in the light which they do.

We think that in correct practice recitals should be introduced, not so much to supply secondary evidence in the event of the loss of the originals, as with a view to explain the situation of the parties, and the precise nature of the assurance they are about to make. The practice of making a deed a sort of abstract of the former title to the property we consider an abuse, even where there is no register, and consequently we cannot regard registration as necessary to put it down. So far as it may tend to check that abuse, we shall of course, in common with other advocates for cheap law, rejoice in the consequence.

The principal feature in Mr. Hodgkin's pamphlet is his answer to Mr. Coote's eulogy of the system of attendant terms. We think that in this part of his essay he has given a complete refutation of that gentleman's main argument, by demonstrating that the existing expedient of outstanding estates (the imaginary completeness of which is supposed to be an adequate reason for not now desiring a better system) is, first, always unjust; secondly, uncertain; thirdly, very limited in its operation; fourthly, productive of great inconvenience in case of second mortgages; and fifthly, extravagantly expensive.

He also points out a variety of important particulars in which registration would be productive of a saving instead of an increase of expence. He concludes this part of his subject by the following remark :—

“ On the whole, I feel convinced that, to the public at large, registration will afford so many means of reducing the costs in relation to the titles of landed estates, that to object to the establishment of a general registry office on the plea of expence, would be about as reasonable as to object to a government post office, because some gentlemen might transmit their letters for short distances more economically by their footmen.”
p. 48.

As to the insinuation which is thrown out that the advantages of a register lie so much on the surface, that it could not have been left to the present generation to establish the register, had not its evils more than counterbalanced its benefits, he remarks, that it might with almost equal plausibility be urged against every discovery or improvement, from Columbus's voyage to the present day.

Mr. Wood's pamphlet is one of the most popular in its style and manner of treating the subject that has appeared in support of registration. At the same time there is not much that is new in it, and a mere analysis of its contents would hardly do justice to its merits. We shall therefore content ourselves with giving our readers a specimen of his reasoning in answer to a very specious argument of his opponent. Mr. Coote had observed—

“ By the bankrupt laws a *bond fide* sale may be set aside by a commission issued within two months after the sale, grounded on an act of bankruptcy prior to the sale, but of which the purchaser might be perfectly ignorant. Supposing, however, a mortgage to have been made by the trader, some considerable time previous to such act of bankruptcy, and by which the legal estate was conveyed by him to the party lending the money, then if the purchaser pays off the mortgage and takes a conveyance of the legal estate, he will have a better legal title than the assignees, and of which, on the principles I have before stated, they will not deprive him. And I am anxious to bring this instance strongly before your view, because it is a protection existing under the present system which no register can possibly afford, and which seems to be overlooked by the friends of the proposed measure.” p. 8.

To this Mr. Wood replies :—

“ So strongly impressed is Mr. Coote with the propriety of favouring the subsequent purchaser at the expence of prior *bond fide* claimants, that he triumphantly asserts that no register can possibly afford the protection which may be relied upon against a commission of bankruptcy awarded within two months of his purchase upon a previous act of bankruptcy. Allowing, for argument's sake, that the law has been settled as here stated (a matter by no means indisputable, see *ex parte* Knott, 11 Ves. 619; *ex parte* Herbert, 13 Ves. 183), what does the fact amount to ?

Simply this : that a deliberate act of the legislature, intended to secure the creditors against all alienations immediately preceding the commission, may be evaded by the *legerdemain* of the bankrupt's conveyancer, who might thus, in every case where there is an outstanding term, set the provisions of the bankrupt law at defiance." p. 16.

Next came the essay of Mr. Bellenden Ker, entitled "The Question of Registry or no Registry, considered with Reference to the Interests of Landowners and Commercial Credit," one of the most complete dissertations that have appeared on the principle of the measure.

Though it takes a comprehensive view of the whole question, its leading characteristic is a searching and convincing examination of the evils and iniquities of attendant terms,—the schedule A of the old system. In this respect it resembles Mr. Hodgkin's; but it abounds with a greater variety of illustration, with more numerous examples, not only of the incompleteness of that system, but of the positive and gross injustice to which it gives rise.

The following statement, by a gentleman of Mr. Ker's practical knowledge and experience, is a piece of evidence which we cannot withhold from our readers:—

"I think," says he, "there is no one acquainted with the subject who will not admit that the present laws are such that no one can be certain he has acquired a safe title to that which he buys, let him use all the caution he may, employ the most careful solicitor, search where search is of avail, and fee the best counsel of the day : the experience of more than twenty years in the practice of conveyancing has long ago satisfied me of this. By a safe title, I mean the right to hold that which is a right against all adverse claimants ; and unless a purchaser can acquire the means of doing this the laws are imperfect, and his bargain is worth so much the less ; consequently, not only his property, but the value of all property capable of sale, is depreciated. Sir M. Hale, a judge of great eminence, was accustomed to say when he bought an estate, 'Now I will give one year's purchase more to be sure that I have got a good title.' Now, as his lordship must have been a pretty accurate judge of the *law* relating to the title to his estate, it is fair to infer, that his fear was directed, in a great degree, to *unknown* dangers. This dread of concealed deeds must not be taken as a fanciful fear—as a mere possibility—as that which the lawyers call *potentia remotissima*,—the very fear is an actual evil, and is in itself to be reckoned a great grievance ; it destroys confidence, and lets in doubt in many cases where in reality there is no ground for it ; it renders people unwilling either to buy or to sell." p. 9, 10.

Mr. Humphry, as his motto* announces, sings the same song ; but to so skilful an artist we lend a willing ear, notwithstanding the number of his predecessors. His style is remarkably good, and

* " Cantilenam candem canis."

we are not sure that if we were to select a single work for the perusal of a person previously uninformed on the subject, it would not be that with which he has favoured the public under the modest designation of "Contributory Remarks on a General Registry."

We have already presented our readers with so many extracts on the *injustice* of attendant terms, that we must not detain them with any farther quotations on that head. The following remarks on the very partial protection afforded by them, will serve as a fair specimen of Mr. Humphry's reasoning :—

"These outstanding estates, the vaunted guardians of purchasers and mortgagees, are confessedly only to be found in a certain number of titles. Whether these exceed or fall short of the less fortunate class of titles in which they are not to be found, I will not venture, in the face of so great a practical authority as Mr. Coote, to state a decided opinion. At all events, there is an incalculable number of titles destitute of the protection afforded by outstanding legal estates, and for which the 'learning and ingenuity of lawyers' have yet devised no corresponding safeguard. What, then, is the condition of these titles? If the security afforded by outstanding legal estates be so great, does it not irresistibly follow that there is not much security without them? We are reduced to this dilemma: either one half of our titles are uselessly encumbered by them, or the other half are imbecile for want of them. The truth is, where they exist they may be rendered protective, though not, perhaps, to the extent contended for, as we shall presently have occasion to observe. But even admitting their complete efficacy as a protection in these cases, it is no answer to the demand for a remedy for those cases in which they do not exist. This mode of viewing the question appears to me at once sufficient to dispose of that part of the argument founded on the protection derived from auxiliary titles or outstanding legal estates. It applies only to half the case."

There is one opinion which seems to be entertained by Mr. Humphry with which we cannot concur. He appears (in p. 28) to be of opinion, that a short operation should be allowed to the doctrine of notice after the execution of a deed, until a purchaser can clothe himself with the protection of the registry. Now, we regard the doctrine of notice as one of the great evils of the present system, or rather want of system: it is a clumsy attempt to do justice without rule. It was introduced by courts of equity in contravention of the common law, and, in register counties, in violation of positive statutes, with the benevolent design of affording relief in particular cases, to which it might be thought the general rules did not apply. Short-sighted benevolence! which did not perceive (to use the forcible language of a judge of modern times) that it is impossible to administer justice so beneficially by aiming at it in each particular case, as by adhering to general rules.

The doctrine of notice will need no explanation to our profes-

sional readers ; but the uninitiated may require to be informed, that by it, however perfect the legal title may be, and with however clear a conscience the purchaser may have paid his money and obtained his conveyance, if any agent or person employed, directly or indirectly, in conducting the purchase, had any information, express or implied, of the existence of any charge on the property, this circumstance will, according to the equitable doctrine of notice—strange abuse of terms!—deprive the buyer both of his purchase-money and the estate. Hence, after expending the greater part of his wealth in the purchase of an estate, the security of his title, and almost the existence of his family, will depend—not on the skill or learning of his counsel,—not on the fairness and honesty of his purchase,—not on the legality and accuracy of the conveyance,—not on the state of the title as it will appear on the records of a public register, and as it may be verified at any time on inspecting them,—but on the accident of his attorney or agent, or some inferior clerk, having heard of a prior claim to the estate. And thus may a perfect legal title be defeated, and the purchaser ruined, by a mere charge, made without the formality of a regular deed, possessing no notoriety, unregistered, unrecorded, and not accompanied with possession, but which happens to be known to the clerk of the town agent of the purchaser's attorney.

To a doctrine, so pregnant with mischievous consequences, neither a limited operation, nor a temporary concession, must be yielded. The real remedy for the evil apprehended by Mr. Humphry, will be found in the system of caveats proposed by the commissioners.

And now we approach an authority, the weight of which, if rumour be correct, it is impossible too highly to appreciate ; we mean that of the writer of the masterly article on this question in the 101st number of the *Edinburgh Review*,—an article which universal report and strong internal evidence unite in ascribing to the same mighty mind which laid the foundation of all the leading reforms in our civil law, “the recollection of whose splendid exhibition in the House of Commons, on the motion for an inquiry into our laws, will,” as Mr. Ker justly remarks, “long remain after all the petty cavils regarding its details are utterly forgotten.”

After a clear and concise statement of the principal arguments in support of the measure, the writer proceeds :—

“We are unwilling, where a case rests upon such a broad basis of reason, to load it with mere authority ; but certainly the names of Sir M. Hale, Lord Keeper Guildford, Mr. Justice Blackstone, and the learned author of the “*Touchstone*,” (whether he were Shepherd or Mr. Justice Doddridge), are to be recited with great respect, and these persons have all pronounced in favour of a registry. The celebrated committee, also, for reforming the law in the time of the Common-

wealth, numbered this among their important propositions; but, as one of their ablest, though least learned members (Cromwell) said, 'the sons of Zeruiah (the lawyers) were too many for them,' and their appointment was not renewed. But the example of what has been done in other countries deserves to be considered even by our all-perfect neighbours of the south; and on this head we may cite Scotland, Ireland, most of the West India Colonies, the United States, and the greater part of the continent of Europe. England is almost the only exception in this important branch of jurisprudence, although, from the single exception in another respect,—the strange peculiarity of her equitable jurisdiction,—she has far more pressing occasion for a registry than any country not governed by English law. Two of her own provinces, the largest and wealthiest, Middlesex and Yorkshire, have at least recognized the principle for above a century, and would have had a perfect application of it in practice, had not certain most unfortunate decisions, and some defects in the arrangements, rendered the registry in these counties of comparatively little use. Imperfect as it is, that it is deemed better than nothing no one can doubt that reads the advertisements of lenders, and observes the preference given to register counties.

"The reader may next, and not unnaturally ask, where are the objectors? What arguments have the combined learning and prejudice of the very learned, and not wholly unprejudiced profession, raised to this important proposition? The experience of other nations has pronounced in its favour. The opinions of wise laymen, founded upon reason, and confirmed by that experience, are ranged on its side. Sir William Petty, in reviewing the consequences which spring from the want of a registry, has said, 'that though few may be actually damnified, yet all are hindered by fear, and deterred from dealing.*' Sir William Temple mentions the registry introduced into Holland and Flanders, by the Emperor Charles V. as one cause of the commercial prosperity of the Dutch, by making all purchases safe.† Sir Joshua Child ascribes the low rate of interest in Holland to 'the ascertaining real securities by their public registries;' the want of which, he says, and not the want of money, makes borrowing difficult in England.‡ Even the high authority of the great lawyers of former days whom we have cited—nothing loth to praise existing institutions of their own country, nor prone to prefer those of others, nor at all affecting change—are arrayed on the same side. What, then, say their successors of the present day? Again the weight of authority is with us. We have on our side the great philosophic lawyer of the age, the father of law reform. But not he—not Mr. Bentham alone—the commissioners, whether of the common law or the equity bar, or those who devote themselves to the practice of conveying, are all of one mind; and Mr. Bell and Mr. Butler, themselves a host, agree. Comforted and assured by such protection, we may venture to meet the opponents of the measure, freely confessing both their high authority in the profession, and their capacity to do the antagonist

* Political Arithmetic.

† Observations on United Provinces, cap. 1. Also, Popular Discontents. *Works*, vol. i.

‡ Discourse on Trade.

argument simple justice. Sir E. Sugden, Mr. Preston, and Mr. Coote, have declared their hostility; and from their large experience as conveyancers, their great general learning, and other powerful talents, we may be well assured that no vestige of a reason can be found to bear against us which has escaped such adversaries as these. We have perused their arguments, we have given them all the attention which they have so good a right to claim; and the result of the inquiry is, that we are far more dismayed by their high names than by their reasonings; and that even their authority and their arguments together appal us far less, and make us less uneasy about the issue of the conflict, than the official attributes wherewithal one of them is invested.

"The only arguments worth considering which these able and learned persons have advanced, may be reduced to these two:—First, the danger or the hardship of making nullity, at least postponement, the penalty of neglect to register; secondly, the inconvenience of giving publicity to the state of men's real incumbrances."

These arguments are then examined, and, as it appears to us, satisfactorily answered.

"The other objections" (continues the reviewer) "which have been urged are either principally to the supposed details of the measure, founded, indeed, for the most part upon the experience of the very faulty registry adopted in Middlesex and Yorkshire; or they are such as the very ingenious method proposed by the commissioners in their report has a powerful tendency to remove. On the principles of that method, our limits prevent us from entering at present; but we cannot dismiss the subject without joining in the general applause which it has called forth, and we trust that before we return to the consideration of the subject, it will have been matured by the learned author, Mr. Duval, and his colleagues, and have finally received the sanction of the legislature."

It will now be proper again to invite attention to some of the arguments on the opposite side. Our course has hitherto, according to the best of our knowledge, been strictly chronological; and if we have had but little of a hostile character with which to treat our readers, we can assure them that it has resulted exclusively from the paucity of the writers who have appeared on that side of the question. It must not, however, be supposed that there has been no opposition. Numerous meetings have been convened, and the alarmist cry of innovation has been raised by the legal conservatives, almost as strenuously against reform in conveyancing as against reform in parliament. The language of the petitions is generally strong; but it would be unreasonable to expect that a subject like this should be fully discussed at a public meeting, or scientifically handled in a petition from a large popular assembly.

The great cry in the north is, "Don't deprive us of our sheepskins." In other places, "Don't disclose our necessities." In others, "Don't drive us all to London to register our title deeds;

for, if you do, we shall be obliged to employ London professional men, and we greatly prefer our own attorneys, whose talents and whose character we can appreciate." It is not very difficult to divine out of whose quiver this last well polished shaft has come; but, passing by its authors, we shall proceed to inquire into the arguments themselves.

As to the first, we may observe, that it is no objection to the principle of the measure, but only to one of the plans, and *that*, unfortunately for the objectors, not the plan recommended by the commissioners, for they propose the registration of a duplicate original. Besides, if it were the original that was to be registered, and an office copy only delivered to the proprietor (on sheep-skins, if he pleased), we should be glad to be informed why he would feel a greater objection to derive title under such a sheep-skin copy of a deed, than he now does under a sheep-skin copy of a will, or a sheep-skin copy of a fine or recovery. We never remember to have met with a devisee who on this ground felt any qualms as to the security of the estate devised to him. At the same time we have a great respect for the prejudices of English country gentlemen, even when we cannot understand them; and so far we think the objection entitled to weight, that we would in no case recommend leaving the proprietor without the possession of at least one original, unless he preferred dispensing with it in order to save the charge.

We believe, however, that much, if not the whole, of the outcry on this head has arisen from supposing that the register is to be retrospective; that landed proprietors are to be called upon to give up their existing title deeds to the Register Office. We were not long since in company with a large landed proprietor in the county of York, who began to abuse the projected measure of a general register, as "one of the worst, most degrading, and most oppressive exertions of tyranny which had been exhibited since the Norman Conquest. For his part, he would rather put all his title deeds into the fire than send them up to London to be overhauled, and done he knew not what with. This was his English feeling on the subject." We were glad of the opportunity of hearing this side of the question. He soon turned the conversation to the difficulties of the law, and to the successful issue of a long law-suit, in which he had been engaged in establishing the existence of certain manorial rights which he claimed. He had spent whole days in the Record Room at the Tower, in the office at the Rolls, in the Augmentation Office, and amongst the records of the city of London; and from these authentic sources of information he and his professional men had obtained all the evidence of which they stood in need, and he thereby came off triumphant in the defence of his just rights. We took the

liberty of hinting that he, at all events, had reason to speak well of a register, since these records, imperfect and scattered as they were, had been the only means of rescuing him from the loss of valuable property, to which he was undoubtedly entitled. He admitted the force of the remark, but said that, though willing that any future disposition which he might make should be registered, he did not like the idea of disclosing past defects. When assured that this was not intended, he expressed his satisfaction with the measure, and said that he had been quite deceived as to its real nature and objects. From what we have seen, we believe that his case is a very common one.

The cry of the needy, "Don't disclose our necessities," has been so fully answered in our extracts from the different works before noticed, that we think it unnecessary to enter upon it again here, except for the purpose of giving Mr. Bickersteth's observations upon it in his evidence before the present committee of the House of Commons, on the 10th of April, 1832. He says :—

"The subject may deserve consideration with reference to the party himself, with reference to his family, and with reference to other persons with whom he is dealing. With reference to the party himself, it is said to be very hard that all the world should know that he has charged his estate with a mortgage, and that his interest in the estate ostensibly is to that extent diminished. The truth, however, is, that concealment is in almost all cases highly prejudicial to the party himself. Every one must have seen unfortunate cases where individuals, ostensibly the owners of large estates, in receipt of the rents, and hoping to conceal the heavy incumbrances with which the estates are really charged, have thought that they could most successfully do so by maintaining a style of living and expence corresponding, not with the real state of their fortunes, but with the value of the estates ostensibly theirs. Such persons are engaged in a constant course of duplicity ; they are always deceiving others,—often themselves ; and they go on recklessly spending money, and contracting fresh debts, till their means are exhausted, and their estates charged beyond the hopes of redemption. An estate producing a rent of 10,000*l.* a-year, but charged with mortgages to the extent of 6,000*l.* a-year, is worth no more than 4,000*l.* a-year to the owner ; but if, as is too often the case, he has the foolish desire of concealing the mortgages, and the foolish vanity of maintaining what he calls his station in the world (meaning what would be his station if he had no mortgages), he will, as long as he can, go on living at the rate of 10,000*l.* a-year, aiding his reduced income by credit, and a succession of disgraceful shifts, till (every year involving him deeper) his 4,000*l.* a-year is at length gone, and he has to depend upon his more prudent friends for the means of subsistence. It is not a system of registration that can prevent such vice and folly from occasionally happening ; but I am persuaded many of such instances are wholly occasioned, and many more greatly encouraged, by the hope of concealment in the parties themselves, and by the actual concealment of the charges from others,

who are induced to give credit to a man's style of living, without sufficient regard to the means by which it is supported."

After considering the subject with reference to the family of the party, Mr. Bickersteth proceeds:—

"As an instance of the effect of disclosures between the owner of the land and the persons with whom he is dealing, I would take the case which is often proposed, of a banker dealing with customers, and I would suppose (as the objection implies) that the credit of the banker mainly depends on the belief which is entertained, that the land which is ostensibly his is free from settlement or incumbrance. If, notwithstanding this belief, the estate is subject to settlement or mortgage, the question is, whether that fact ought to be disclosed; whether the banker ought to be permitted to derive credit from land which, although in his possession and ostensibly his, is really not his in full ownership or for the full value. The supposed foundation of his credit being impaired, is the law to assist him in supporting a credit without foundation, by preventing the disclosure of facts so important to the customers? Are the customers, who are so liable to be deceived, to be left under the delusions of a false credit, in order that the banker may have a chance, at their risk, of re-instating his affairs? Are they, under the sanction of the law, to be induced or permitted, for want of knowledge, to continue a credit which it is admitted they would withdraw if they were acquainted with the truth? There can be but one answer to these questions, and concealment in such cases is so mischievous and disgraceful, that I am persuaded no honourable banker would ever desire it. The gentlemen, whose answer to the question of the commissioners is found in the appendix to their Report, have, as I conceive, very justly said, 'that more mischief arises in the mercantile world from false appearances of property, and erroneous impressions as to the real circumstances of parties, than from any other cause whatever.' And it is clear that if the law enables the banker to conceal his settlements and mortgages, it enables him to lay a snare for his customers, and do that sort of mischief which the law ought to be very diligent to prevent. On the whole, therefore, I cannot consider the disclosure which would result as an objection to registration. On the contrary, I think that it would be a collateral benefit of very great value. At present, a man may be the ostensible owner of land, and yet have very little interest in it: great mischief may, and frequently does, proceed from this source. Registration would enable you to know the real interest of the ostensible owner, to the great advantage of the community, and, as I think, of the owner himself."

As to the argument, that the register would have the effect of driving the professional business of the country to London, we should greatly regret it if it had that consequence; and, so far as it may even remotely tend to produce such an effect, we admit that it would be a deduction from the signal benefits conferred by registration; but when put in competition with those benefits,—with the protection of landed proprietors against the loss of deeds,

and of purchasers or mortgagees, against their suppression,—it is really quite insignificant. But we are by no means sure that any such consequence as is supposed would follow. Numerous searches are even now required to be made in London, and we do not think that the searches at the Register Office would be attended with any greater difficulty. The latter might, just as well as the former, be made through the medium of a town agent, and possibly even without one when all the arrangements of the office are completed.

A very spirited pamphlet, from the pen of Mr. Mewburn, next demands our notice. This gentleman is, we believe, a solicitor in highly respectable practice, in the county of Durham. He has a great dislike to registration in general,—a still greater aversion to metropolitan registration; but the extreme of his antipathy is reserved for London solicitors and counsel, into whose hands he thinks that the proposed measure would throw all the conveyancing business of England. Having just noticed this objection, we shall refrain from treating our readers with the *piquant* passages on that subject, contained in Mr. Mewburn's pamphlet; more especially as most persons will, we apprehend, be of the opinion that it has very little to do with the real merits of the question at issue. We shall, therefore, proceed to more important matter.

It is no marvel that the author should undervalue the benefits of a register, since he almost denies the existence of the evils which it is intended to remedy.

"The Second Report of the Commissioners," he observes, "commences with an elaborate statement of the numerous evils attendant upon the present system of conveyancing; but it is very perceptible, from the document itself and from the evidence attached to it, that an exaggerated importance has been assigned to that which a general registry is more particularly intended to cure. The annual number of transactions concerning real property is estimated at 80,000, but the aggregate instances of the suppression of deeds, within the collective experience of the profession, *in the course of twenty years' practice*, do not, in ALL PROBABILITY, exceed 1,000; * a contrast of figures which clearly evinces the impolicy of allowing a possible, but very improbable occurrence to influence the resolves of the legislature, when the subject shall come under discussion. The investigation made by the commissioners, indeed, reminds one of Don Quixote's battles with the giants, whom his diseased imagination constantly conjured up. They have displayed an universal—I might almost say a morbid—apprehension of fraud, which the small portion of dishonesty actually existing is far from warranting. Yet, to defend us against this bugbear, the complicated and cumbersome machinery, which the ingenuity of the commissioners has devised, is

* "The probability is, that the number of instances is far more limited; as few attornies, even in extensive practice, have had any circumstances of the kind brought before them."—*Note by Mr. M.*

sought to be put in requisition ; as if knavery were the rule, and upright and honourable dealing the exception ! ‘ Fraud ’ seems to have haunted the commissioners like an *ignis fatuus* ; besetting them in their dreams by day, as well as in their visions by night. Wheresoever they turned their steps, in whatever direction they rambled, the phantom seems to have presented itself to their view, and to have ‘ frightened ’ the learned gentlemen ‘ from their propriety.’ ”

These charges, brought against the eight highly imaginative and Quixotical gentlemen who constituted the Real Property Commission, would certainly be very grave accusations as respects their character, and very important to the question at issue, if they were borne out by the evidence in the cause. This evidence we have endeavoured to weigh with care and impartiality. We have, for this purpose, examined the Appendixes to the two Reports of the Commissioners, and the testimony and admissions furnished by the works of the principal opponents of the measure ; and we can assure our readers that the result of this investigation is perfect demonstration that the perils and actual losses arising from the absence of a register are neither few nor far between. We wish that our limits admitted of laying all the proofs in a digested form before our readers ; but we must content ourselves with referring to the above printed sources of information, and with remarking that if the opponents of registration mean to take their stand on a denial of the dangers which exist where there is no register, they must reject four-fifths of the evidence, and “ trust,” instead, “ to their imagination for facts.”

To deny us the protection of a register because Mr. Mewburn or his clients have happily not been the frequent victims of conveyancing fraud, would be about as reasonable as to refuse a police to an extensive and populous district because, though numerous murders, assaults, and robberies, had been committed on the highways, a considerable proportion of the population had entirely escaped. Those who have already suffered in person or in purse, those who have been prevented from travelling through fear, and even those who, though they have no occasion to leave home, find the price of provisions raised by the insecurity of the district, will with good reason complain if the government does not afford them protection. Besides, there is one consideration connected with this subject which may perhaps prevent even Mr. Mewburn from resting with perfect repose on his “ parchment couch ; ” we mean the fact, that if no new check upon fraud is now devised, we have every reason to anticipate that it will not remain stationary. The numberless instances of ingenious deception which have been published in the evidence, and the many lucid explanations which have been given by the writers on both sides of the question, of the modes in which an honest purchaser or mortgagee may be

cheated, must have served to instruct the rogues as well as to warn honest men; and we think that this insight into the nature of all our locks and fastenings is (to keep up the metaphor) a strong additional argument for the necessity of a new and a more efficient police.*

Mr. Mewburn is much alarmed at the difficulties which will attend searches at the Register Office, on account of the similarity of proper names, and this, we think, would be a very serious objection to a registration if no other method could be devised than that adopted in Yorkshire and Middlesex; but, whilst we wish to give all due weight to Mr. M.'s observations, we must be permitted to observe that the objection has nothing to do with a plan which does not depend upon an index to names, but upon an index to title deeds. The arrow, therefore, altogether misses its aim; and we can only suppose that the author has either never read the plan of the commissioners, or never taken the pains to understand it. Nor is his appeal to authority on this subject much more satisfactory.

"I am supported," says Mr. M. "in this impression by the high authority of one of the most distinguished Chancery lawyers of the day, who has said that 'if we register by the names of grantors, and John Brown has granted to Richard Smith, who has conveyed to James Wilson, or other names of like frequent occurrence are met with, it must be the business of a life carefully to examine such common names.' 'I fear, also,' says Mr. Bell, 'the costs of search, the chance of something being overlooked, and the carelessness of persons making the search, are likely to occasion greater evils than those we are at present subject to.'"

But Mr. Mewburn does not tell us that by a subsequent communication, sent to the commissioners after Mr. Bell had seen their plan, and which communication is contained in the very same volume with the previous extract, he thus clearly states his more mature opinion on the subject:—"Having this opportunity of again addressing you, before I conclude, I beg leave to add, that the more I consider the matter the more I am satisfied of the necessity of a register act." In another part of his communication Mr. Bell says, that a plan has been suggested which promises fair to remedy the difficulty which arises when the index is by names only, and to furnish a most simple plan of indexing; and that with common care no mistake appears likely to take place on indexing. He also remarks that the plan suggested by the commissioners for a register promises to be effectual, is beyond his original hopes, and has removed most of his difficulties concerning registration; though he adds that time and experience may suggest farther im-

* See Mr. Lefevre's evidence before the Select Committee of the House of Commons.

provement on it. (See Second Report, pp. 310, 312, 313.) We trust that Mr. Bell has now spared us the necessity of solving either his own former doubts or Mr. Mewburn's difficulties.

It may not be amiss, before closing our narrative of the controversy, to notice the observations of an ingenious author, whom we hardly know whether to designate as friend or foe to the great measure under discussion. We mean Mr. Robert Gream Hall, who, after informing us, both in his answer to the commissioners, and in his separate work, entitled "A Substitute for Official General Registration," that he inclines, although with much hesitation, to a general registry, if effected by district offices, produces a bantling of his own which is to supersede it.

His plan is to register all charges and incumbrances on the principal title deed. The author, after committing the logical error of a *petitio principii*, by assuming that the common assurances of the realm may be *safely* and *best* left to the management of the parties interested in the existence, accuracy, and preservation of them (p. 5), proceeds to the details of his plan, into the machinery of which, however, we do not propose to enter, as there appears to us to be several objections which are decisive against the principle:—

1st. It makes no provision for the safe custody of deeds.

2d. If the deed happens to be lost, the register is gone.

3d. If there are duplicate deeds, which is a very common case in marriage settlements, and used to be frequent in purchases, it opens a door to the greatest frauds.

4th. It is subject to all the evils of the present local registers, by giving notice of deeds, the loss of which may render the title completely unmarketable.

Having disposed of nearly all the controversy on the subject, we come to the Second Report of the Commissioners, and to the two bills which have been successively introduced into parliament, in order to carry into effect the plan recommended in that report.

We should have noticed these earlier, had we not been desirous, as far as possible, of keeping together the different arguments for and against the *principle* of the measure.

The Report commences with a clear statement of the law as it at present exists, and of the evils incident to it—of the benefits to be derived from a register, and of the objections which have been advanced against it, together with their refutation.

The commissioners then proceed to enumerate the different existing modes of registration; namely, by alphabetical indexes of names of persons—by alphabetical indexes of names of places—and by indexes referring to every different estate, the estates to be identified by maps; and, after rejecting them all, they propose

their own, which is delineated with considerable neatness and precision.

The inconveniencies and evils attending the first and second plans they successfully demonstrate; but we are far from thinking they are equally happy in their attempt to prove the impracticability of the third. Indeed, we are persuaded, that if it were not for the delay and expence attending the original formation of it, the most perfect system of registration would be one dependent upon maps.

We are happy in being supported in this opinion by so great an authority as Mr. Bickersteth, whose evidence, both before the commissioners and the Select Committee of the House of Commons, is a treasury of professional knowledge and legislative wisdom. He says (Second Report, p. 315)—

“ On reading the outline of a plan which has been circulated by the commissioners, I think it excellent as far as it goes; but I observe with regret that it contains no proposal for the registration of matters relating to pedigrees, nor any provision for the formation of maps, or of indexes of the names of estates and lands, and of their owners. It is justly said to be impossible to describe an estate with ease and accuracy without a map; and it may with equal truth be said to be impossible to refer to the registry of an estate without a map and without an index, in which its name, or the name of its owner, is to be found. In forming the necessary indexes, it is to be considered that the land alone is that which remains fixed in geographical position from age to age; that the names of the lands and the roads, fences, and even houses, are not subject to any such swift or considerable changes as would make it difficult to indicate them on maps already formed, and when once formed easily renewed from time to time, when a sufficient number of changes should render it necessary; and that though the owners of many lands are continually changing, yet that the changes, under a system of registration, would always be indicated by the register itself.”

And again :

“ There can be no doubt that the due elaboration of a good plan and system will require great skill and knowledge, and very laborious and long-continued attention. This, therefore, in common with all other tasks which require the application of great knowledge and industry, is difficult; but I apprehend that the difficulty will not be thought insuperable by any mind habituated to contemplate difficulties with a view to overcome them. *Divide et impera*: let the subject be considered with reference to a small district, or with reference even to manors, the court-rolls of which have been kept so imperfectly, and so entirely without regard to the main object now in view: make the district small enough, and it will be seen how easy it would be to make an accurate plan and list of every close of land it contains, with the name, form, and superficial contents of each. How easy, also, to record and render accessible, the evidence of all known facts affecting the title to each close. What in these respects is true of any one district, is true of every other, and of

all the districts into which the whole country may be divided; and the regulations for making known those facts which ought to be known in relation to the matters in question, may be made as easily for the whole country as for any district within it."

We have also the satisfaction of believing, that the commissioners themselves were not unanimous in rejecting the system of maps as impracticable. But though this preference, on our part, to the system of maps, is the result of long deliberation, we are far from wishing to urge it in the present stage of the business. On the contrary, we think that the plan of the commissioners (or rather of Mr. Duval, for he is avowedly both the author of it, and the perfecter of it, in all its details) is, under existing circumstances, the most suitable for immediate adoption.

In the first place, it can be acted upon forthwith, whereas the system of registration by maps would require a considerable time to be set in operation. In the second place, the first cost of Mr. Duval's plan will be far less to the country, which in the present state of our finances, is not an inconsiderable advantage. In the third place, it has obtained the approbation of a very large number of the most competent judges in the profession, and, instead of sowing division amongst those who had previously agreed to the principle, it has had the rare merit of bringing over those who had before considered registration desirable but impracticable. Amongst this number must be included the great names of Mr. Bell and of the late Mr. Saunders. We well recollect the energetic manner in which, whilst the plan was yet in its infancy, that lamented juriconsult used to speak of the happy solution which Mr. Duval's genius had provided for the difficulties of this intricate question. Willingly do we join in this just eulogium of a contrivance which, whilst it is exact and methodical in its details, is beautifully simple yet scientific in its principles.

When, in addition to these advantages, we recollect that the map system can at any time be very readily superadded to Mr. Duval's, and that after the public have begun to reap the benefits of registration, they will probably be less reluctant to incur an additional expence in perfecting it, should necessity or convenience dictate a change, we are prepared to give our unqualified assent to the proposal of the commissioners.

The details of their plan are now before the public in so clear and authentic a shape, both in the Second Report, and in the proceedings of parliament, that we should not have thought it necessary to do more than simply to refer to them here, had not the idea somehow or other gained ground, that the proposed method does not deserve the character of clearness and simplicity which we have just given to it. This mistaken idea is principally attribut-

able to two circumstances, first, to the unfortunate use of the term symbols, both in the outlines of the plan originally circulated by the commissioners, and also in their Second Report: and secondly, to the length and complexity of the first register bill, introduced into parliament in the session of 1830.

Those who have never taken the trouble to understand the plan have imagined that there was something very mysterious in the system of symbols; many have even supposed that it had somewhat of a mathematical character, and that the symbols were a new importation from algebra into law; whereas, in plain truth, it is only a term which Mr. Duval happens to have used, in order to designate the heads or numbers under which the deeds are to be registered. It is manifest that if 100,000 deeds, or upwards, are to be registered every year, some plan must be adopted for preventing their getting into confusion, and some index must be kept for facilitating the reference to them. The index of names of persons and of places both being rejected as inadequate, Mr. Duval has devised another, which may be described as an index of title deeds, with reference to the titles.

If a proprietor had ten estates, he would not, at least if he was a man of order, throw them all pell mell into one box, without regard to date or title. He would put the title deeds of each estate by themselves, and he could arrange them according to order of date. What your man of method and order does for his ten estates, Mr. Duval's plan will effect for all the estates in the kingdom; and at the same time, as the deeds will frequently change owners, he provides for their continual arrangement in a new box, as often as such a change or the splitting or consolidation of estates renders it necessary.

This is really all the art and mystery of the system. We can assure landed gentlemen that there is neither algebra nor witchcraft in it, and that now the term symbol is laid aside, every thing is clear and straightforward. But what need, then, it may be asked, of such a cumbrous act of parliament, almost as long and as complicated as the Reform Bill?

This, again, is no fault of the system; it proceeds merely from a little want of tact in the patrons of the measure. The first bill contained not merely the principal and essential formulas of the system, but all the fittings-up (if we may so speak) of the Register Office.

If we were to establish beforehand by act of parliament all the office details of the Bank of England or Stamp Office, or even of a private merchant's counting-house, the thing would, we doubt not, appear on paper nearly as complicated, and perhaps, indeed, altogether impracticable.

The course adopted by the commissioners will no doubt greatly

facilitate the completion of all the various minor arrangements when the office is established ; but it was putting the measure to a test of unreasonable severity, and loading the statute roll with that which did not properly belong to it.

The bill of last session is of a very improved character. We recommend our readers to peruse it attentively for themselves (if they are men of practical experience), to trace out, as we have done, an abstract of title, with reference to its provisions. We are persuaded that they will find this an easy operation, and that they will agree with us in the opinion that the Register on Mr. Duval's plan will, in addition to the objects more immediately proposed by it, contribute to the improvement and simplification of abstracts, by promoting order and connexion.

We wish that we could view the proceedings in parliament on this subject with the same satisfaction as the labours of the commissioners. But, till a late period, they have been of a most discouraging description. Mr. Campbell and other promoters of legal reform have addressed nearly empty benches ; and where there has been a fuller attendance, it has generally been occasioned by the presentation of violent anti-register petitions, got up at meetings in which we suspect the most part, like the Ephesians of old, knew not wherefore they were come together. And if the opponents of registration in the house have ever deigned a reply, it has only been to bring up some thrice refuted argument of disclosure being pernicious to commercial credit, or to compare the intended Register Office to the tomb which Artamesia raised for her husband Mausolus, or to furnish some other equally judicious illustration of legislative and professional wisdom.

At length, however, a select committee was appointed for the purpose of inquiring into the principle and details of the measure, and of taking evidence upon it. This committee, over which Mr. William Brougham, the brother of the Chancellor, presided with great zeal and ability, has gone far to redeem the character of the house. All the members for Yorkshire, the county most opposed to the bill, were upon the committee ; it was therefore likely to undergo no very sparing scrutiny. A great deal of evidence was advanced on both sides, and the door was set as widely open as possible to the objectors. The result, however, of all this inquiry has been a report of great impartiality and research, decidedly favourable to the principle, at least, of the great measure under contemplation. We extract the concluding paragraph.

"After mature deliberation, your committee are unanimously of opinion, that a general register of all deeds and instruments affecting land will be of decided advantage, as regards large purchases. With respect to smaller transactions, especially those in the country, in which the more cumbrous and intricate proceedings of the law are generally dis-

pensed with, your committee believe that the same facility which would be afforded by a general register in dealings with large estates, applies equally to sales of small properties; yet inasmuch as the expence of registration will be more severely felt by the latter than by the former, and as sales of small estates are so much more numerous than transfers of great properties, your committee feel some doubt whether the benefits to be derived will more than compensate for the certain expence to be incurred. However, as it is plainly impossible to fix any limit which would not lead to this anomalous result, that all property above a certain value should be governed by one law, while all below it should be regulated by another, your committee are, upon the whole, of opinion, that if the cost of registration could be so adjusted as to be comparatively small upon purchases below a certain value, the system of registration will be made most perfect, by being made applicable to all lands, without reference to their value."

The report contains no intimation of an opinion whether the registration should be local or metropolitan. Had it done so, we are afraid, from what we hear, that the committee would not have been equally unanimous in agreeing to it. The fact is, that there exists a very considerable aversion amongst many country solicitors to the establishment of a metropolitan register, partly from the mistaken notion, already alluded to, that it would tend to drive professional business to London, and partly from an apprehension that it would impede the advance of money on deposits of title deeds, and on loans on pressing emergencies. As to the latter objection, we are much inclined to concur with a large majority of the judicial and private authorities who have given an opinion on the question, in thinking that mortgages by deposit ought not to be suffered to exist, at least in their present state, or, as Mr. Humphry has well expressed it, "The best remedy for deposits without writing is the abolition of them, and the substitution of some simple instrumental security." But admitting, for the sake of argument, that they ought to be continued in their present form, we think that with the aid of the caveats recommended by the commissioners they might be made a more convenient and a more perfect security under the Registration Bill, than they have ever yet been.

But it will be said that if the registration is metropolitan, the transaction cannot be completed in less than four or five days, where the parties are resident in Yorkshire, whereas with the present local registers it might be completed in one or two days. Rare indeed are the cases in which a man's necessities come upon him so instantaneously as not to allow of four or five days' notice. But, supposing such a case, it may be observed, that where an advance is made with such speed, the loan generally proceeds very much upon confidence. The security is taken rather as a protection against the other creditors of the borrower, than against his dis-

honesty. And where it does proceed upon confidence in the personal good faith of the borrower, neither the title nor the register is in general regularly examined; and if this is so, the distance of the office is immaterial. But let us put a case the most unfavourable for the metropolitan register; let us suppose that the title is so simple that the lender's attorney has really satisfied himself of its completeness by inspecting all the deeds, and that he resides so near the local register office that he has actually had time to make all the needful searches on the day of the application for the loan—a very remarkable case indeed: still, as the law exists even now, he must either send to London to ascertain that there are no judgments or crown debts, or he must rely upon the borrower's assertion that there are none: if the latter, it is still a loan of confidence, and the borrower is just as much to be trusted in respect of the one fact as of the other; if the former, the supposed difficulty is at an end; for the time which would suffice for a search for judgments and crown debts would just as well suffice for the general search at the metropolitan Register Office. This view of the subject has not we believe been noticed by any of the writers on registration. It will be seen that it depends on the special wording of all the Yorkshire Register Acts, which make a judgment as valid if registered within a given number of days as if registered at the time. Hence no purchaser or mortgagee of lands in Yorkshire is safe against judgments, if he does not search in Westminster as well as in Yorkshire.*

This grand objection to a general metropolitan register being thus got rid of, every other argument, as it appears to us, imperiously calls for its adoption, in preference to country or district offices. It will be much cheaper; it will be more perfect in its details, and will be more readily susceptible of continued improvement; it will prevent the evils of diversity of practice; it will save the necessity of a great multiplication of original deeds and searches, where property in different counties is included in the same assurance; and it will harmonize better with the registration of wills, bankruptcies, and judgments.

* Whilst on the subject of the Yorkshire register it would be a great omission not to advert to the excellent pamphlet published by a committee of solicitors in reference to the indexes of the West Riding registers. This pamphlet admits many of the defects of those registers as at present constituted, and it proposes some palliatives which might in some degree lessen them, but it by no means goes to the root of the matter, namely, the substitution of a more efficient system of registration, in lieu of that which depends on an alphabetical list of names of persons. It also leaves untouched the great evil of the present Yorkshire and Middlesex registers, which is, that a good title may be rendered perfectly unmarketable by the register's disclosing a lost deed, of which it may be impossible to give any secondary evidence whatever. In a case like this a register does more harm than good. Holographic registration is the sole mode of obviating this evil. Some striking facts connected with this subject will appear in the evidence taken before the select committee of the House of Commons.

We have thus endeavoured to take a historical view of this question, and to weigh the evidence and the arguments on both sides. We think it must satisfactorily appear that the evils of the present system stand in need of a remedy,—that what are supposed to be corrections of these evils only increase their amount,—that registration is a simple and efficient cure for them,—and that the objections which are brought against it are either groundless or comparatively unimportant. With this conviction we desire only that the matter should be thoroughly and fairly canvassed, and we trust that all who have any interest in landed property, either as proprietors or expectants, as vendors or purchasers, as lenders or borrowers, will examine for themselves, judge for themselves, and act for themselves; and will not allow any man or class of men to dictate to them the course which they ought to pursue in reference to this important head of legal reform, of which it has justly been said that there is no improvement likely to be carried by a reformed parliament, more really and extensively beneficial than this one of a general register.

We subjoin a table of the principal authorities for and against registration. Had time permitted, we doubt not it might have been rendered more complete, perhaps, on both sides.

AUTHORITIES.

AGAINST REGISTRATION.

The Lawyers in the Committee for Reforming the Law during the Commonwealth, of whom Cromwell says, "These sons of Zeruiah are too many for us."

Mr. Pierrepont.

Lord Eldon.

Sir Edward Sugden.

Sir Charles Wetherell.

Mr. Preston. (We fear we must now place him among the opponents, though at first he was doubtful.)

FOR REGISTRATION.

Cromwell.

Mr. Asgill.

Mr. Justice Doddridge, or Shepherd.

Sir Matthew Hale.

Lord Keeper Guildford.

Sir William Temple.

Sir Josiah Child.

Mr. Justice Blackstone (with some qualifications of his opinion).

Mr. Butler.

Mr. Humphreys.

The Lord Chancellor.

The Lord Chief Justice of the King's Bench.

The Lord Chief Justice of the Common Pleas.

The Lord Chief Baron.

A considerable Majority of the Judges.

Mr. Bell.

The eight Commissioners :—

Mr. Campbell.

Mr. Tinney.

Mr. Saunders.

	Mr. Duval.
	Mr. Hodgson.
	Mr. Duckworth.
	Mr. Brodie.
	Mr. Tyrrell.
Mr. Coote.	Mr. Bickersteth.
Mr. Mewburn.	Mr. Miller.
	Mr. Bellenden Ker.
	Mr. Walters.
	Mr. Humphry.
	Mr. Hodgkin.
	Mr. Wood.
Two Barristers, whose testimony is given in the Appendixes to the Second Report of the Real Property Commission.*	Thirty-six Serjeants and Barristers, whose testimony is given in the Appendixes to the Second Report of the Real Property Commission* (excluding those mentioned above).
Twenty Solicitors* ditto.	Forty-four Solicitors* ditto.
	A considerable body of London Merchants and Bankers (see Second Report, p. 545).
	The following countries and districts :—
	France.
	Switzerland.
	Germany.
	Prussia.
	Denmark.
	Holland.
	Norway.
	Sweden.
	Most of the Italian States.
	The United States of North America.
	The British Colonies in ditto.
	The West India Islands.
	Scotland.
	Ireland.
	Middlesex.
	Yorkshire.
	The Bedford Level.

It is worthy of remark, that no country or district, so far as we are aware, has ever established a register, and subsequently abandoned it.

ART. II.—THE JUDICIAL ESTABLISHMENTS OF FRANCE.

We now resume this subject† with the

COURS ROYALES.

The *Cours Royales* possess various jurisdictions, and, like the *Cour de Cassation*, are divided into several chambers.

* Two Barristers and ten Solicitors either give no opinion, or speak equivocally on the question.

† The mode of proceeding in these courts is laid down at considerable length in the article 309 to 380 of the Code d'Instruction Criminelle.

There are twenty-seven *Cours Royales* in France. The jurisdiction of each extends over a certain number of departments. They are composed some of fourteen, some of twenty-four, and others of thirty judges: that of Rennes has forty members, and that of Paris sixty.

But independently of this number of judges, which may be varied at the pleasure of the crown within certain limits, there exists, since 1808, a body of counsellors, possessing a deliberative voice, under the title *conseillers auditeurs*. These judges may be associated by the order of the *Garde des sceaux* (the minister of justice), with the judges of the *tribunaux de première instance*, within the jurisdiction, and even with those of the *Cours d'Assises*, where their judgment extends to capital cases; or they may remain attached to the *Cour Royale*. Their number may amount to one-fourth of that of the members, presidents, and counsellors of each court. They exercise alternately the function of *ministère public*, which they may discharge at the age of twenty-two. At this age they may also sit as assistant judges, without any other qualification than that of having sat two years as *juge auditeur* in a *tribunal de première instance*, or having practised for two years as advocates at the bar. The institution of these judge-counsellors, and particularly that of the *juges auditeurs*, has given rise to loud and well-founded objections since the re-establishment of the constitutional government. They owe their origin to the Machiavelian genius of Bonaparte, who, from his hatred of the principle of the independence of the judges, passed the following decree in 1807:—

“Art. 1. In future the appointments of the judges for life shall not be delivered to them until they have exercised their functions for five years, nor unless at the expiration of that time his majesty the emperor and king shall consider that they deserve to be continued in office.

“Art. 2. In the course of December, 1807, an inquiry shall be instituted in the manner hereinafter mentioned (that is to say, by a commission nominated by his majesty), with regard to those judges who have become notorious by their incapacity, their misconduct, or by a carriage derogatory to the dignity of their station.

“Art. 6. It is reserved to his imperial and royal majesty to decide as to the continuance or dismissal of the judges named in the report of the commissioners.”

But, to return to the *Cours Royales*. In each court there is a first president and several other presidents, the former presiding over the whole court, and the latter over the various chambers; the other members have the title of counsellors. They are all nominated by the king, and are irremovable. The presidents

must be chosen out of the court over which they are to preside, and must be at least thirty years of age. No person can be appointed counsellor until he has completed his twenty-seventh year, and has either taken a degree in law, practised two years at the bar, or been six years a *conseiller auditeur*, or ten years an attorney. The *conseillers auditeurs* are selected from a list of three candidates, presented by each court for every vacancy, and must be taken exclusively from the *juges auditeurs* of the *tribunaux de première instance*.

The first president of the *Cours Royales*, like that of the *Cour de Cassation*, bears for life the title of baron, when he has been ten years in office, and has discharged his functions to the satisfaction of the king.

The salary of the first president of these courts is, at Paris 36,000 francs, at Lyons and Rouen 25,000 francs, at Toulouse and Rennes 20,000 francs, and in all the others 15,000 francs. The salary of the counsellors is at Paris 8,000 francs; at Lyons, Bordeaux, and Rouen, 4,200 francs; at Toulouse 3,600 francs; and in the other courts from 2,500 to 3,000 francs. The salary of the *conseillers auditeurs* is one-fourth of that received by the members of the court to which they are attached, and that of the presidents of chambers is one-fourth more than that of the counsellors.

The counsellors despatched to preside at the assizes, in any other department than that in which the *Cour Royale* sits, receive an addition of one-fourth to their salary during the period of this duty. In the jurisdiction of the *Cour Royale* of Paris the addition is only an eighth.

It thus appears that the office of president of the *Cour d'Assises* is one not only of honour but of emolument; and it has been remarked, that the appointments of the minister of justice have not always been made with a due regard to the experience, the information, and the talents of the party.

A deduction is made from the salaries of the members of these courts similar to that of the *Cour de Cassation*.

The members of the *Cours Royales* are generally distributed into three chambers, one for civil causes, another for appeals from the *Police Correctionnelle*, and the third for *mises en accusation*, a sort of preparatory tribunal, similar to our grand jury, for inquiring into the propriety of sending the parties accused to be tried at the *Cour d'Assises*. The number of chambers in each court may be diminished or augmented at the pleasure of the king. Temporary chambers may also be created, which are composed either of counsellors taken from the other chambers, or of *conseillers auditeurs*. In the more numerous courts there are two chambers devoted to civil causes; in Paris there are even three. In the civil chambers the presence of seven judges is required; in the

other two there must be at least five. The method of voting is the same as in the *Cour de Cassation*. In cases of an equal division of voices, one or more judges are called in, who have not heard the cause, and who are taken in the order of the lists. The cause is then heard again, or is reported, if the matter be upon the record. If all the members of the court have already taken a part in the cause, three advocates of long standing are called in.

Some causes must be tried by two chambers united. All the chambers sometimes meet together, either on some point of practice, or for the trial of matters of great public interest.

The first president usually presides in the first civil chamber, and in the other chambers whenever he thinks fit. The presidents and counsellors are distributed alternately in the different chambers.

No member is obliged to serve more than one year in either of the criminal chambers, nor more than two years in the same civil chamber; the removals must, however, be managed so that the criminal chambers may be always composed, at least with regard to one half, of members who have before served in the same chamber.

The *conseillers auditeurs* attached to the *Cours Royales* are distributed among the different chambers by the first president.

The *Cours Royales* have also cognizance of jurisdictions, although in an inferior sphere. They hear suits for determining by what judge a dispute is to be tried, which has been brought before two tribunals, *de première instance* or *de commerce*, within the province of the court, or before two or more *juges de pays*, not under the jurisdiction of the same tribunal *de première instance*.

In civil matters the *Cours Royales* hear appeals (which are final, except when they are such as may be carried to the *Cour de Cassation*) in causes tried by the tribunals *de première instance* or *de commerce*; but, to give a right of appeal, the amount in dispute must be above 1,000 francs principal, or 50 francs yearly revenue. They also hear appeals on references ordered by the presidents of the tribunals *de première instance*.

To them likewise appeals lie against the decisions of arbitrators, in cases of commercial partnerships, where the reference is compulsory; and in ordinary cases, even if the arbitration is purely voluntary, provided the cause be one which, without an arbitration, might have come within the cognizance of the tribunals *de première instance*, with or without a right of appeal; for in all cases of arbitration there is a right of appeal, unless the parties have formally renounced it.

The *Cours Royales* also take cognizance of certain peculiar cases, such as suits for *réhabilitation*, brought by merchants who have failed, after they have discharged all the claims upon them. The *réhabilitation* is not granted except on these terms. They decide also upon cases of *adoption*, which, for the advantage of

the public and the individuals concerned, may be submitted to a judicial investigation, from which there is no appeal.

The *Cours Royales* are also courts of appeal in matters of police, which comprehend petty offences or infractions of the law, punishable by fine, imprisonment, or other minor penalties. They likewise take cognizance of offences committed by the great officers of the Legion of Honour, by generals commanding a military district or department, by archbishops, bishops, or presidents of a consistory, whether Protestant or Jewish, and by *prefets*. These causes are brought before them in the first instance, and there is no appeal from their decision. They may also exercise the same jurisdiction over students and members of the universities, when required to do so by the *procureurs généraux*. They have likewise power to determine petty offences alleged to have been committed by a *juge de paix*, a member of the *tribunal de première instance*, or by a public officer attached to these courts, either in the exercise of his functions or not. With respect to the more serious crimes imputed to those persons, they only act as a chamber of accusation.

The *Cours Royales* in like manner take cognizance of offences committed by members of the *Cour de Cassation* and of the *Cour des Comptes*, whether in the exercise of their functions or not; so also with regard to crimes committed not in the exercise of their functions by members of the *Cours Royales*, or public officers attached to them; but, in the latter case, the *Cour de Cassation* directs the trial to be heard before some other *Cour Royale* than that to which the parties accused are attached.

Lastly, in criminal matters, the *Cours Royales*, as we have already mentioned, discharge the office of a grand jury, after the case has been sent up to them by the *Chambre en Conseil* of the *tribunal de première instance*. The matter must come before the *Cour Royale* if insisted upon by only one judge. The chamber of accusation also decides on the opposition offered by the public officer or the civil party to the discharge of the party accused, when it has been ordered by the *judges de première instance*. This chamber deliberates in secret, to the exclusion even of the *procureur général*, the *greffier*, the party accused, and the witnesses. The party accused has, generally speaking, still the remedy of an appeal to the *Cour de Cassation*, against the order for the trial of his case before the *Cour d'Assises*.

The *Cours Royales*, until they have pronounced sentence in a case of accusation, have the power *ex officio*, whether the cause has commenced or not, of ordering a criminal prosecution, calling for documents, and whatever is requisite for the furtherance of it. There have even been late examples of this power being exercised, as in the affair of the Ouvrard contracts.

These courts also take cognizance of certain proceedings against justices of the peace, members of the *tribunaux de première instance* or *de commerce*, in their jurisdiction, and even against their own members individually; also against a whole *tribunal de première instance* or *de commerce*, if it is not for a crime punishable by forfeiture, or any higher penalty, for in that case the proceedings must be before the *Cour de Cassation*. If the suit arises out of a cause pending before the *Cour de Cassation*, it cannot be tried by the *Cour Royale*.

The *Cours Royales*, like the *Cour de Cassation*, exercise a power of inspection, censure, and discipline over their own members and those of the *Cour d'Assises*; and, in case of neglect on the part of the *tribunaux de première instance* to exercise a similar power over themselves and their inferiors, the *Cours Royales* have the same authority over the members of those tribunals, the justices of the peace, and the police judges within their jurisdiction. On persons who, without precisely infringing the law, have been wanting in honour or delicacy, the court pronounces a penalty of simple censure, with reprimand or temporary suspension, subject, however, with regard to the two last, to the approbation of the minister of justice.

The advocates, *greffiers*, and *huissiers* (whose duties will be afterwards explained), and the other officers of the court, are subject to the same authority and discipline.

The appearance of the parties in civil matters in the *Cours Royales* is by the *attornies* (*avoués*), a class of officers attached to the different courts, for the purpose of managing the proceedings, and whose intervention is indispensable to the prosecution of the suit. The number of these *attornies* is limited, and they may dispose of their places in the same way as the advocates of the *Cour de Cassation*, and, like them, they are obliged to find security. The office of attorney in the *Cours Royales* is distinct from that of attorney in the *tribunaux de première instance*, but their organization, &c. being nearly the same, we shall speak of them more at length in treating of the *tribunaux de première instance*.

The advocates of the *Cours Royales* practise in all the courts except the *Cour de Cassation*, where they may sometimes be admitted, particularly in criminal matters, to offer observations. The retaining an advocate is optional on the part of the suitor. Their number is unlimited; but no person can be admitted as an advocate without handing to the *procureur général* of a *Cour Royale* his diploma of licentiate of law, which must be registered by the clerk of the court. Advocates are admitted at a public audience of the *Cours Royales*, where they take the following oath:—"I swear to be faithful to the king, and to obey the constitutional charter, to say and publish nothing as counsel contrary

to the laws, to the regulations that may be in force, to public morals, to the safety of the state or to the public peace, and never to forget the respect which is due to the public authorities." Every year, at the opening of the courts, this oath is again administered to the advocates.

The advocates were divided by the late *Garde des sceaux*, de Peyronnet, into the three following classes :—

1. *Avocat stagiaire*, or those who, on leaving the university, are bound to keep a term of three years, which consists in attending on the sittings of the courts, &c.

2. Advocates attached to the *Cours Royales*, or those who, after having kept their term, reside and practise in these courts, and are consequently upon the lists. They are not allowed to practise out of the jurisdiction of the *Cours Royales*, without the consent of the first president and of the *Garde des sceaux*, a regulation made by M. de Peyronnet.

3. Advocates attached to the *tribunaux de première instance*, viz. those not residing in a town which is the seat of a *Cour Royale*. By M. de Peyronnet's regulations, they are only allowed to plead before the tribunal *de première instance*, the *Cour d'Assises*, and the other tribunals of their department.

It is the duty of the advocates of the *Cours Royales* to give gratuitous advice to the poor. From among them and the attorneys are chosen the official defenders of prisoners, &c.

They have a disciplinary council, as have also the advocates of the *tribunaux de première instance*, in those places where their number amounts to twenty; but where that is not the case the functions of the council are discharged by the tribunal itself. The president of each disciplinary council has the title of *Batonnier*.

The advocates sometimes perform the duty of assessors to the judges. In case of an equal division of votes, they are called in to decide. They are likewise liable to serve on juries; and, lastly, they may be called upon to make up the number of judges in the *tribunaux de première instance*.

The proceedings before the *Cours Royales* are, with a few exceptions, the same as before the *tribunaux de première instance*. The rules are laid down at great length in the *Code de Procédure Civile*, to which must be added various regulations which cannot be more particularly noticed in this place.

The appeals in general suspend the execution of the sentences appealed against, unless the inferior courts have ordered execution to issue provisionally, notwithstanding an appeal. The court may even, in some cases, issue an injunction staying the provisional execution.

The appellant to the *Cour Royale*, in civil matters, who has judgment against him, is fined ten francs.

TRIBUNALS DE PREMIERE INSTANCE.

To every territorial district or sub-prefecture, of which there are 361, there is attached a tribunal *de première instance*, except in the case of Paris, where the court serves for the whole department. The sittings of these courts are held in the capital of each district. They are also sometimes called correctional tribunals for abbreviation, their official title being *tribunaux de première instance*, even when they decide in matters of police.

Each tribunal *de première instance* is composed of from three to twelve judges, without counting the supplementary judges; the tribunal of the department of the Seine alone has forty-two judges, including its president and vice-presidents. The supplementary judges are persons in each place, who, without having any regular functions or fixed salary, replace for a time either the regular judges or the public officers. They have no vote in the deliberations of the court, except when it is equally divided, or when filling the place of one of the judges; but they have a right of being present at all the audiences, and of delivering their opinion. These judges, like all the others, are nominated by the king, and are irremovable.

No person can be nominated a regular or supplementary judge of a tribunal *de première instance* until he has completed his twenty-fifth year; he must also be a licentiate of law, and have practised at the bar two years as an advocate, or have been an attorney ten years. The president must be at least twenty-seven years old.

A body of *juges auditeurs* was also created by Bonaparte, similar to the *conseillers auditeurs* mentioned in speaking of the *Cours Royales*. They are nominated by the king, and may be despatched to the different tribunals of the kingdom, where, at the age of twenty-five, they discharge the same functions as the other judges, and, in case of absence or other detention, are called to supply their places in preference to the supplementary judges. Under twenty-five years, they have only the right of giving their opinion, without having a voice in the judgment, but they may be nominated at the age of twenty-one, after keeping a term of one year as an advocate. They have no salary, except when they are performing the duties of a judge or a public officer.

This institution of *juges auditeurs*, so contrary to the independence of the courts, was perfected by a royal ordonnance, under the ministry of M. de Peyronnet; and these judges, who originally might only be added to tribunals of less than four judges, are now attached indifferently to all the tribunals *de première*

instance. It is not known, however, what use the ministry have made of this power.

The head of a tribunal bears the title of president, and the judges who preside in the different chambers where the tribunals are divided in that manner have the title of vice-presidents. At Paris there are as many vice-presidents as chambers; but in all the other courts there is no vice-president to the chamber to which the president of the tribunal is attached.

The salary of the president is the same as that of the judges, with an addition of one half, except in some towns, where it is fixed; as, for instance, at Paris it is 16,000 francs; at Lyons, Bordeaux, Marseilles, and Rouen, 6,000 francs; at Lille, Nantes, and Toulouse, 4,200 francs; and at others as low as 3,000 francs.

The salary of the vice-presidents is one-fourth more than that of the judges.

The salary of the judges varies from 1,250 to 3,000 francs, according to the situation of the court, except at Paris, where it is 6,000 francs. These salaries are of course subject to the same deduction as the others, and one half is distributed, or held to be distributed, in fees for attendance. These judges, as well as their widows and orphans, are entitled to proportionate retiring pensions.

The tribunals *de première instance* cannot proceed without the presence of three judges. Those which are composed of only three or four judges, and three supplementary judges, only form one chamber; those which have seven or eight regular judges, and four supplementary, are divided into two chambers—one of which hears the civil causes, and the other the police business. Those which have a greater number of judges are divided into several civil chambers. The tribunal of the department of the Seine is divided by its peculiar organization into seven chambers, two of which, the sixth and seventh, take the police business (fiscal and other). When circumstances require it, the king has power to create temporary chambers, which are composed of any of the different classes of judges belonging to the court.

Each chamber must be composed of at least three judges, and not more than six. When the chamber is equally divided, another person is called in, either a judge, *juge auditeur*, supplementary judge, advocate, or attorney, in the order of precedence, and the cause is then tried again.

The president of a tribunal composed of several chambers may preside over whichever he chooses to attach himself to, which is generally the first. The other members are distributed among the different chambers, in such a manner that each judge sits alternately one year in each chamber. The supplementary judges are included in this rotation, and are bound also to serve,

if necessary, in any other chamber besides that to which they are attached. At Paris only the vice-president sits two years consecutively in the same chamber. In tribunals composed of more than two chambers the rotation is regulated as in the *Cours Royales*, by a commission, subject to the approbation of the whole tribunal or the *garde des sceaux*.

In case of the necessary absence of a judge, the requisite number is made up by taking in his place a member of another chamber, or one of the persons who, as already mentioned, may be called in when the court is equally divided.

The tribunals which sit in the capital of each department, as we have already hinted, have larger powers than the tribunals of the other districts. The tribunals *de première instance* try all disputes respecting the jurisdiction of the *juges de paix* and *de police* in their districts. In civil matters, they hear,

1. Appeals from the *juges de paix*, and even from the *conseils de prud'hommes*, in those places where there is no tribunal *de commerce*, that is, when the causes are not such as to be decided, without appeal, by those judges.

2. Appeals from the decisions of arbitrators, when the dispute is not of such a nature as to justify an appeal to the *Cour Royale*, that is, in such causes as have been contested, and which, if there had been no arbitration, would have been in the jurisdiction of the *juges de paix*. If the appeal is without cause, the party is liable to a fine of five francs.

3. All civil causes not commercial, which are not within the jurisdiction of the *juges de paix*, as well as all commercial causes in places where there is no tribunal *de commerce*. They have jurisdiction over these matters in the first resort, subject to an appeal to the *Cour Royale* when the value of the subject-matter of the suit exceeds 1,000 francs in principal, or 50 francs per annum; but when it is under that amount their decision is final. However, the trial of these causes, whether with or without appeal, must be preceded by an indispensable preliminary, denominated *préliminaire de conciliation*, which consists in an obligation on the parties, before commencing or defending a suit, to appear before the *juge de paix* (either of the domicile of the parties, or of the place where the subject of the litigation is situated), in order to be reconciled if practicable. If either of the parties refuses to appear, he is fined ten francs. The *juge de paix* then acts, not as a judge, but as an amicable mediator, and if he fails to bring about an agreement, he dismisses the parties to decide the matter in the regular course of law. This obligation is universal, except in causes where great despatch is required, or where the age or circumstances of the parties renders them incapable of managing their affairs; but it is to be regretted that, in practice,

this paternal intervention of the *juges de paix* has neither the solemnity nor the beneficial result which might be wished.

Certain revenue causes are of necessity taken before the tribunal of the capital of the department, as those relating to stamps and registration.

These tribunals watch over the execution not only of their own decrees, like most other courts, but also of those of the tribunals *de commerce*, when any difficulties arise. In these cases the presidents, on their sole authority, and without the concurrence of the other judges, may issue provisional orders, subject to appeal to the *Cour Royale*, and without prejudice to the merits of the case. This recourse to the tribunal *de première instance* is called a *référé*.

In criminal matters, in the widest acceptance of the word criminal, these tribunals hear appeals from the tribunals *de simple police*, of which we shall speak presently, and which are the courts that try *contraventions*, or petty offences to which the law has awarded minor punishments, such as fines not exceeding fifteen francs or imprisonment for not more than five days.

All the tribunals *de première instance*, without distinction, have authority to decide in the first instance, upon accusations of offences committed within their territory. These cases, whether heard before or after appeal, are tried by them in the same way as by the *Cour Royale*, without the concurrence of a jury. They are also invested with powers in criminal matters similar to those of a grand jury (*jury d'accusation*), with this difference, that in certain cases their decisions are liable to appeal. The public accuser, or the parties prosecuting, may also, instead of summoning the person accused of a police offence directly before the tribunals, denounce him before the *juge d'instruction*, of whom we shall speak shortly, who investigates the matter, and makes his report to the *Chambre du Conseil* of the tribunal *de première instance*. Each chamber of the tribunal can form itself into a *chambre du conseil*, in order to hear the report of the *juge d'instruction*; and if, upon this report, the judges are of opinion that the act is a simple misdemeanour (*contravention*), the person accused is sent down to the tribunal *de simple police*; if the case is of a higher nature, the case is referred to the proper tribunal, leaving to the public accuser or the party grieved the right of appeal to the *Chambre des mises en Accusation* of the *Cour Royale* against their decision.

If the judges are of opinion that the act is not an offence, they declare that there is no case for prosecution, but the other parties have still a right of appeal to the chamber of the *Cour Royale*.

If, however, the judges, or even any one of them, should be of opinion that the act is such as to be punished by graver penalties,

the case is immediately sent up to the *Chambre d'Accusation*. Prosecutions for acts which come under the denominations of *crimes*, in opposition to minor offences (*simples délits* or *contraventions*), must undergo the double examination of the *Chambre du Conseil du tribunal de première instance*, and of the *Chambre d'Accusation* of the *Cour Royale*; and the party accused has still, as we have seen the power of appealing to the *Cour de Cassation* against the decree of the *Cour Royale*.

The *juges d'instruction*, of whom we have just spoken, belong to the *tribunaux de première instance*, and form part of the number of judges sitting on all cases, not excepting those in which they have acted as *juges d'instruction*. They are two in number, in tribunals divided into three chambers, and only one in those which consist of one or two chambers; at Paris there are ten, besides four supplementary judges. They are appointed by the king, and their salary is one-fifth more than that of the other judges. Their power is considerable; with the exception of cases of *flagrant crimes* (that is to say, which are actually committing or have just been committed), they alone, besides the *Chambre du Conseil*, and that *des mises en accusation*, have the power of issuing warrants of arrest or summons against the parties accused or the witnesses. In cases of *flagrant crimes*, that is to say, when the party is pursued by hue and cry, or is found with the effects, arms, instruments, or papers in his possession, which render it probable that he is the offender or an accomplice, then if it be shortly after the crime has been committed, the *procureur du roi*, and the officers of police who assist him, may grant a warrant of arrest or summons.

In matters relating to offences of the press, they alone have the power to direct the seizure of writings, printings, placards, drawings, engravings, paintings, emblems, or other instruments of publication. The proceedings being completed, the *juges d'instruction* make their report to the chambers to which they belong; and they are obliged to render an account at least once a week of all the causes entrusted to them. In cases relating to the press, unless within thirteen days after seizure the *Chambre du Conseil* give their decision on this report, the seizure is at an end; and if it is only a case of *délit*, the action falls to the ground. It is to be regretted that the law contains no similar regulation for ordinary causes.

The tribunals *de première instance* have also a power of inspection and discipline over the *juges de paix* and *police*, and over their own members. In case of neglect on their part, this power is exercised by the *Cours Royales*, which, in all these cases, decide without appeal.

The proceedings before the tribunals *de première instance*, in

civil causes, are carried on by means of attornies. In criminal causes only the party claiming damages for the offence is obliged to have recourse to their assistance. No person can be appointed an attorney to a court *de première instance* until he has completed his twenty-fifth year, attended a course of civil and criminal law at an university, passed an examination before the professors, and brought their certificate of his capability. To be appointed attorney to a *Cour Royale*, he must also prove his having served a clerkship of five years. The attornies, as we have already mentioned, are obliged to give security. Their number is limited, and their places are transferable like those of the advocates of the *Cour de Cassation*. They have a common purse and a chamber of discipline. Their charges are fixed by law.

The pleadings before the tribunals *de première instance*, in civil as well as in criminal causes, are carried on—1. By the advocates of the *Cour Royale*; 2. By the advocates of the tribunal *de première instance* residing in the department or district; and 3. In those tribunals where the number of advocates is not sufficient, by the attornies.*

TRIBUNALS DE COMMERCE.

The number and the seat of the tribunals *de commerce* are not regulated by law; the power of establishing them being vested in the king whenever he thinks proper to comply with the request of the local authorities. The *arrondissement* or extent of their jurisdiction is not fixed or uniform, though in general it is co-extensive with that of the tribunal *de première instance* of the district in which it is situated; but, when there is more than one tribunal *de commerce* in the district of a tribunal *de première instance*, each has particular limits assigned to it.

Each tribunal is composed of a president and at least two and not more than eight judges, without including the supplementary judges, whose number is proportioned to the quantity of business.

The members of the tribunals are not nominated by the king, but only receive their appointments from him. They are not appointed for life, but elected for two years, and may be re-elected after an interval of one year. They discharge all their functions gratuitously.

The presidents and judges are elected by the principal traders of the district, in general assembly. The number of these electors must not be above twenty-five in towns the population of which does not exceed 15,000; and in other towns one elector is added

* For the regulations of the proceedings see also the *Code de Procédure Civile*.

for every thousand inhabitants. The list of electors is drawn up by the *préfet* of the department, and submitted to the approbation of the minister of the interior. They ought to be selected from among the heads of the oldest houses, distinguished by their probity, their regularity, and their economy; but in later times in these elections, as well as in others of more importance, different motives have often prevailed with a corrupt administration. Even in Paris most shameful and ridiculous omissions have been remarked in the list of *notables*, as these electors are called. Every trader, of thirty years of age, may be chosen a regular or supplementary judge, provided he has been carrying on business with credit and respectability for five years, or has done so for the same length of time at some former period, and is not actually engaged in any other business. The presidents must be forty years of age, and can only be elected from among the senior judges.

The decrees of the *tribunaux de commerce* must be made by at least three judges, and the supplementary judges can never be called in unless to complete this number. When even in this manner the requisite number cannot be obtained, the tribunal is completed by merchants taken from the list of *notables*, in the order in which they are inscribed, and answering in other respects to the qualifications required for the judges.

At Paris the tribunal is composed of nine regular judges, including the president, and fifteen supplementary judges; it is divided into two sections, of exactly similar composition and powers. The cases which fall under the cognizance of these tribunals are as follow:

1. All disputes relating to contracts and transactions between merchants, tradesmen, and bankers; actions against factors, clerks, or servants, arising out of their conduct in the business of their employers; disputes relating to commercial transactions between all persons, such, for example, as bills of exchange, in which these tribunals may even order personal arrest.

2. Bills issued by the receivers, payers, collectors, and other persons connected with the public revenue.

3. Insolvencies, not including cases of *rehabilitation*.*

The *tribunaux de commerce* have cognizance of these causes without appeal, when the amount of the sum in dispute does not exceed 1,000 francs principal; if it is above that, there is an appeal from their decision to the *Cours Royales*.

The *tribunaux de commerce* also act as courts of appeal, in cases of disputes tried by the *prud'hommes*.

In commercial actions, even before the civil tribunals, the *préliminaire de conciliation* is dispensed with.

* Vide ante, *Cour Royale*, p. 350.

The proceedings before the tribunals *de commerce* are carried on without the assistance of attorneys. Even advocates are not allowed to plead without a special authority. In some towns, the great number and importance of commercial causes have given rise to a separate class of advocates, who are called *agrées près les tribunaux de commerce*, but who have no other legal or official character: Their places, however, are bought, and are transferable, but without requiring the approbation of the king. In actions of great importance it is customary to have recourse to the assistance of the advocates of the *Cours Royales*, or of the tribunals *de première instance*.

JUSTICES DE PAIX AND TRIBUNALS DE SIMPLE POLICE.

JUSTICES DE PAIX.

There is in France a *justice de paix* for each canton, or, rather, canton and *justice de paix* are synonymous terms, signifying the same territorial extent and boundary. However, in towns of more than 100,000 inhabitants, such as Paris, and not divided into cantons, there is a tribunal of *justice de paix* for each municipal district (*arrondissement*). In other departments, each *sous-préfecture*, or district, is divided into several cantons. The total number of *justices de paix* in the kingdom is 2,910.

Each court of *justice de paix* is composed of the *juge de paix* and his *greffier*, or clerk; and there are also two supplementary judges, appointed to take his place in case of absence or accident.

These magistrates are nominated by the king, and are removable by him. No person can be appointed until he is twenty-five years of age, the only condition required; but the place is incompatible with that of *maire* or *adjoint*, *greffier*, secretary of the *maire*, &c. However, in *communes* of less than 4,000 inhabitants, the *maire* or *adjoint* may also be supplementary *juge de paix*. The salary is at Paris 2,400 francs, and in other towns and *communes* from 1,600 to 800 francs, besides certain sums allowed by law, according to a fixed table, for the discharge of certain functions. Their fixed salary is subject to the deduction of two per cent., like that of the other judges.

The *juges de paix* are at the same time both judges and public officers acting as mediators, arbitrators, and family protectors. To these different functions they also unite duties of an administrative nature, of which it is not necessary to give an account.

As arbitrators, mediators, &c., it is their duty, as we have already seen, to endeavour to reconcile the parties who are forced to appear before them previously to commencing or defending a suit.

As family protectors, particularly of minors, absent persons, &c., they take a part in and preside at the nomination of guardians,

trustees, &c. It is their office to put their seals upon the effects of persons dying, in which minors, or persons who are not present, are interested.

In their judicial capacity, these magistrates take cognizance of the following civil causes, in which, if the amount does not exceed fifty francs, there is no appeal from their decision:—

1. All causes *en reintegrande*, that is to say, suits relating to the possession of real property, brought by the parties who have been in peaceable possession by an undisputed title for a year or more, provided the action is commenced within the year in which they are disturbed in their possession. They also decide disputes respecting the removal of boundary-stones, injuries to lands, trees, hedges, ditches, or other enclosures, and encroachments on water-courses; but these actions must also be brought before them within the year in which the trespass is committed.

2dly. Actions for repairs as the charge of the tenants of houses or farms, or for indemnification claimed by them for being out of possession, when the right to the indemnity is not disputed.

3dly. Actions for the payment of the wages of workmen, or arising out of the reciprocal contracts of master and servant.

4thly. Actions for damages for slander or assault, when the parties do not seek redress from the criminal courts; also actions for damages done by men or beasts to fields, fruits, and crops.

5thly. All other actions relating simply to persons or moveables, the value of which does not exceed 100 francs.

The appeals from the *juges de paix* in all cases are carried before the *tribunaux de première instance*.

We shall presently have occasion to treat of the same persons as *juges de simple police* and officers of the judiciary police.

Attornies are not required for the purpose of conducting proceedings before the *juges de paix*, whether in civil or criminal cases. The parties themselves may appear.

TRIBUNALS DE SIMPLE POLICE.

The *tribunaux de simple police* are composed either of the *juge de paix* or of the *maire*, as *juge de simple police*. The *juge de paix* has a concurrent jurisdiction with the *maire* for all petty misdemeanors (*contraventions*) committed in his district or canton. A *contravention* is such an infraction of the law as is punished by this court with imprisonment for one to five days, and by a fine of from one to fifteen francs. The following matters are cognizable by the *juge de paix* alone, to the exclusion of the *maire*.

1. Petty misdemeanors committed within the principal *commune* of the canton, and in certain cases in the other *communes*.

2. Certain descriptions of petty misdemeanors, such as slander, offences against the forest laws, prosecuted by individuals, &c.

3. All such misdemeanors for which the party grieved claims an indefinite sum for damages, or a sum exceeding fifteen francs.

All other misdemeanors are tried by the *maire*, concurrently with the *juge de paix*.

The rules and details for the proceedings before the tribunals of simple police, are laid down in *code d'instruction criminelle*, articles 137 to 178.

Appeals are taken before the tribunals *de première instance*.

CONSEILS DE PRUD' HOMMES.

The jurisdiction of the *prud' hommes* is over commercial and manufacturing matters. The councils are established by a royal *ordonnance*, at the request of the commercial or manufacturers' chambers of the town in which the institution is desired.

These tribunals are composed exclusively of tradesmen, manufacturers, master-workmen, and others working on their own account: they are elected at a general meeting of those classes, and a third of the whole body is renewed every year, the same members being, however, re-eligible. Their services are entirely gratuitous.

Their office is to reconcile, or, if necessary, to try the petty differences and disputes which arise daily between the manufacturers and workmen, masters, journeymen, and apprentices, belonging to the same trade as the judges.

They decide, without appeal, to the amount of one hundred francs; but above that sum there is an appeal from their decision to the tribunal *de commerce*, if there is one within their jurisdiction, otherwise to the tribunal *de première instance*.

The proceedings before them are extremely simple, being conducted by the parties in person, *ore tenus*, and without the intervention of attorneys.

MINISTÈRE PUBLIC AND OFFICIERS DE POLICE JUDICIAIRE.

The class of magistrates denominated *procureurs généraux*, *avocats généraux*, *substituts du procureur général*, *procureurs du roi*, and *substituts du procureur du roi*, are included under the general denomination of *officiers du ministère public*. The only civil tribunals in which the officers of the *ministère public* practise are the *Cour de Cassation*, the *Cour Royale*, and the tribunal *de première instance*; the *tribunaux de commerce*, the *justices de paix*, and the *conseils de prud' hommes* have no similar officers. There is a *procureur général* and six *avocats généraux* attached to the *Cour de Cassation*. Each *Cour Royale* has a *procureur général*, assisted by a certain number of substitutes

and *avocats généraux*. Each tribunal *de première instance* has a *procureur du roi*, and one or more substitutes.

The functions of the *ministère public*, in the *Cours d'Assises*, are performed in those departments where there is a *Cour Royale* by the *procureur général* or his substitutes, or *avocats généraux*; in other departments by the *procureur du roi* of the district in which the *Cour d'Assises* is sitting. The counsellors and *juges auditeurs* are also sometimes called upon temporarily to take the place of the officers of the *ministère public*.

In the *Cour des Pairs* the officers of the *ministère public* have been hitherto specially appointed in each cause.

In the tribunals of simple police, the functions of the *ministère public* are discharged by the *commissaires de police*, or by the *maires* or *adjoints*, who, as we have seen, are both administrative and municipal officers.

The military and maritime courts have also their officers for the discharge of these functions.

The *procureurs généraux*, *avocats généraux*, &c., and, generally speaking, all the officers of the *ministère public* are nominated by the king, and removable at his pleasure. The salary of the *procureur général* is the same as that of the first presidents; that of the *avocats généraux* and *procureur du roi* is generally about the same as that of the presidents of the chamber or tribunal; and that of the substitutes the same as that of the counsellors or judges. The same deduction is made from these salaries as from those of the judges.

No person can be appointed to these offices in the *Cour de Cassation*, the *Cours Royales*, or the tribunals *de première instance*, unless he is a licentiate of law, and has practised two years at the bar. A *procureur général* must be thirty years of age; an *avocat général*, a *procureur du roi*, and a substitute for a *procureur général*, twenty-five years; and a substitute for a *procureur du roi* twenty-two years old.

The functions of these officers in civil matters are limited. They have certain powers in the case of minors, and other persons, who may be incapable or absent. They may also interfere in cases of decided lunacy; and in cases of bigamy or legal incest they may promote proceedings for the purpose of having the marriage declared invalid, or the parties separated.

If it comes to their knowledge that a judgment has been given contrary to law, or that a court has exceeded its powers, and none of the parties have appealed within the time appointed, they may carry the judgment before the *Cour de Cassation*, for the purpose of its being annulled.

But it is principally in criminal matters that these officers are the guardians of public order, and of the execution of the law.

They act not only as the public accusers, for the repression of all crimes, offences, and misdemeanors, but as officers of judiciary police, whose duty it is to search after, and collect, proofs preparatory to a prosecution. This office of collecting evidence is performed by the *procureurs du roi*, under the superintendence of the *procureurs généraux*; and they are assisted by the *juges de paix*, the officers of the *gendarmerie*, the *commissaires de police*, the *maires* and *bailiffs* (*adjoints*). The superintendence of the *procureur général* of a *Cour Royale* extends over all these functionaries, and even to the *juges d'instruction*.

Those offences which are denominated *délits* may be prosecuted before the tribunals *de police correctionnelle*, either on the direct prosecution of the *ministère public*, or by petitioning the *juge d'instruction*, who then reports the case to the *Chambre du Conseil*. Graver offences, on the other hand, which are termed crimes, cannot be proceeded against until after preliminary information, an order of the *Chambre du Conseil*, and a decree of the *Chambre des mises en accusation*.

Except in cases of *flagrant crimes*,* or at the request of the head of a family for crimes committed within his house, the officers of the *ministère public* have no power of issuing summonses for appearance, or warrants for arrest before judgment, but must petition the *juge d'instruction* to issue them.

The officers of the *ministère public* have the power of appealing against the decisions of the criminal courts, when necessary, with the delays and forms prescribed by the law. They may also apply to the supreme court to fix the jurisdiction of judges, to remove a cause from one court to another, on legal ground of suspicion, &c., or they may, if they think proper, oppose applications made by other parties for those purposes.

It is also their duty to see the decrees and judgments of the criminal courts executed. In case of misconduct in any of those offices, they are reminded of their duty by the *procureur général* of the district, and a report is made to the minister of justice, who either sends down the necessary injunctions through the *procureur général*, or summons the offenders to his own presence to give an account of their conduct.

The tribunals *de première instance* may denounce to the *procureur général* the officers of the *ministère public* acting in their own courts, or in the *tribunaux de simple police* of their district; but the *Cours Royales* and *Cours d'Assises* lay their complaints against their own officers directly before the minister of justice.

The *officiers du ministère public*, on the other hand, may petition the presidents of the different courts to exercise their disci-

* See *ante*, p. 358.

plinary power over those judges who act in a manner derogatory to their office. No decision, however, can be given in matters of discipline with regard to their own members, until the party accused has been heard, or at least duly summoned, and the *procureur général* or *royal* has given his opinion in writing. This officer is also bound to render an account of the decision to the minister of justice.

The conduct of the other officers, such as the *attornies*, *greffiers*, *huissiers*, &c. is also subject to the inspection of the officers of the *ministère public*, who may require the courts to inflict the disciplinary punishments, and forward the decisions to the minister, with their observations.

The officers of the *ministère public* also exercise a superintendence over the laws and internal regulations of the different courts. Thus it is the special duty of the *procureurs généraux* in the *Cours Royales*, and of the *procureurs du roi* in the *tribunaux de première instance*, to see that the laws and regulations of the court are properly enforced; and when they have any observations to make on these points, the presidents are bound to summon a general assembly upon their demand.

Every year, at the opening of the courts, the officers of the *ministère public* deliver a discourse on the observance of the laws and the maintenance of discipline. They remind the advocates and attornies of their respective duties, and express their regret at the losses sustained by the bar in the course of the year.

The first Wednesday after the opening, all the chambers of the *Cour Royale* are assembled in the council chamber, and the *procureur général*, or an *avocat général*, in his name, delivers a discourse on the manner in which justice has been distributed in the preceding year within the jurisdiction of the court, pointing out the abuses which may have arisen in its administration, and proposing those amendments which he thinks necessary, conformably to the laws. The court is bound to deliberate on these propositions, and the *procureur général* transmits to the minister of justice a copy of his discourse, and of the orders which have been made in consequence. These discourses, from the circumstance of their being delivered on a Wednesday are called *Mercuriales*.

The officers of the *ministère public* are the medium of communication between the courts of justice and the government. It is the office of the *procureur du roi*, every six months, to draw up a statement of the number of cases in the preceding half year, distinguishing those that were tried and those that remained unheard, with the causes of the delay in the latter case. This statement is sent to the *procureur général*, who forwards it to the minister of justice, with his observations, and who also draws up, and sends in, a similar statement of the business of his own court.

It is the duty of the *greffiers* also, as we shall shortly see, to send in similar reports; and these are the materials of the statements with regard to the administration of justice, which the ministers have at last, within these two or three years, thought it right to publish.

GREFFIERS.

The *greffiers* are officers appointed to keep the rolls and lists of the courts, and to give copies of the judgments. In the *Cour de Cassation*, and each of the *Cours Royales*, there is a *greffier en chef*, and in each tribunal *de première instance*, *de commerce*, and *justice de paix*, a *greffier* and several clerks. The duty of the *greffier* in the *Cours d'Assises* is performed by the *greffiers* of the *Cours Royales* or the tribunal *de première instance*. The same officers, in some other courts, have only the title of secretaries.

The *greffiers* are nominated by the king, and have the appointment of their own clerks. Their situation is generally transferable, in the same way as that of the advocates of the *Cour de Cassation* and the attorneys. In the *Cour de Cassation* and the *Cours Royales* they must be licentiates of law, and have completed their twenty-seventh year; and in a tribunal *de première instance*, or of a *justice de paix*, they must be twenty-five years of age. They are obliged to give security.

The government defrays the salary of the *greffiers*, out of which they are bound to pay their clerks or assistants, as well as all the expences of their office; but they also receive certain fees for entries on the rolls, copies of judgments, &c. Their offices and registries are public, and they are obliged to furnish any extracts of the registries that are asked for, at a fixed rate.

HUISSIERS.

These are officers whose duty it is to serve notices, and to execute judgments in civil cases. Some are also selected to perform the office of *crier*, calling on the causes, and preserving order in the courts or *audience*, from which they derive their name of *huissiers audienciers*.

They are nominated in general by the king, and their situations are transferable. No person can be appointed until he has completed his twenty-fifth year, nor unless he has served two years with a notary, attorney, or *huissier*, or three years with a *greffier* of a *Cour Royale*, or a tribunal *de première instance*. They must give security.

They have no salary, but are allowed certain fees upon the different services which they perform.

They make, among themselves, a common purse, to which each contributes a small portion of his emoluments, and they have a chamber of discipline, and are also subject to the superintendence of their respective courts.

ART. III.—THE LAW OF ARREST.

Fourth Report made to his Majesty by the Commissioners appointed to inquire into the Practice and Proceedings of the Superior Courts of Common Law.

When Captain Booth, as we are informed by Fielding, told Mr. Bondum, the bailiff, that by the old constitution of England he had heard that men could not be arrested for debt, the bailiff answered, "That must have been in very bad times, because as why," says he, "would it not be the hardest thing in the world if a man could not arrest another for a just and lawful debt? Besides, sir, you must be mistaken, for how could that ever be? Is not liberty the constitution of England? well, and is not the constitution, as a man may say, whereby the constitution, that is, the law and liberty, and all that——"

Such was the opinion of Mr. Bondum, the bailiff. The Common Law Commissioners, in the appendix to their Fourth Report, have published, in about six hundred closely printed folio pages, no inconsiderable mass of similar evidence.

The Report itself is in spirit and in principle excellent, yet it wants method, and, though short, might, with much advantage, have been made shorter. The same positions are twice and thrice repeated, as if it had been thought necessary that each of the Commissioners who signed the Report should separately pronounce them. Then the reader is hurried from one topic to another with a confusion which ought not to occur in so elaborate a document, and when he thinks an objection answered or an argument concluded, is startled at its re-appearance where he had no reason to expect it.—But these are pardonable errors.

We shall endeavour to eviscerate from the body of the Report, and arrange in something resembling order, the arguments on both sides of the question, as they may be gathered from the statements of the Commissioners; we shall then notice their recommendations, and add a few remarks on the "Supplementary Paper." It should be observed that these arguments in strictness relate to the subject of *arrest on mesne process*, but that, in fact, they are

applicable also, in most cases, to the question of arrest in execution.

It must be understood that the Report bears only the signatures of Mr. Pollock, Mr. Starkie, Mr. Evans, and Mr. Wightman; attached to it; Mr. Serjeant Stephen dissenting from it, and adding a separate report of his own, under the title of a "Supplementary Paper."

1. The first and most plausible argument in favour of the present law is, that the fear of arrest operates to induce debtors, from dread of imprisonment or exposure, to pay the debt without resorting to any further process; and that to deprive creditors of this advantage would be productive of great mischief.

Upon this question the evidence collected by the Commissioners is very contradictory. Those who are in the habit of suing out bailable writs, and who find that the captured debtor settles the action, of course attribute the happy result to the arrest; while others, whose practice it is to proceed by serviceable process only, discover that they can attain, by their own means, the same end. After all, it is a question of fact, whether in proportion to the number of writs issued, more persons settle the action immediately on bailable than on serviceable process. Now from the official return before the Commissioners, it appears that, on an average taken from 256,901 actions commenced by serviceable process, nearly *one half* are settled on service, without any appearance entered; while on an average taken from 26,650 writs commenced by bailable process, not *one in six* of the defendants pays or settles in the first instance, but either cannot be taken, or is carried to gaol, or gives bail to the sheriff. So much for *facts*.

Where a man is arrested, he is either able to pay the debt or he is not. If he is able, the commencement of a suit against him and the certainty of the accumulation of costs are a sufficient inducement to payment, in all ordinary cases, without an arrest. If he is unable, the arrest is in no way beneficial to the creditor; it merely gratifies his disappointed and vindictive feelings. Where the debtor has either money or credit, and is worth pursuing, the fear of imprisonment will not operate, because he can with ease procure bail. With regard to exposure, the effect of an action brought against him is very nearly the same, whether it be commenced by bailable or by serviceable process. Where a man has neither money nor credit, it is surely a singular mode of enabling him to pay his debts to incarcerate him, and thus to preclude every possible chance of acquisition.

2. It is said that the security of bail is an advantage to a creditor of which he ought not to be deprived. In some sense, so far as the appearance of the party is concerned, this is true; but the advantage which the creditor regards is very different. His advan-

tage lies in the chance (and not a very remote one) of *fixing the sheriff, or the bail*, that is, of saddling those parties with the whole debt, in consequence of some technical defect in the proceedings, wholly without reference to the non-appearance of the defendant. It is difficult to say upon what principle a creditor should be allowed to retain an advantage like this. But independently of this objection, which might be removed, the whole system of bail is injurious and pernicious; in entailing a most burthensome expence upon the debtor, which he must discharge before he is allowed to defend the action. It gives rise to extortion and oppression of every kind, and it is the fruitful source of the most notorious perjury. The propriety of requiring bail where the debtor is likely to abscond is another question, upon which we shall touch presently.

3. Even where the debtor is not solvent, the power of arrest is said to be efficacious, by procuring payment from his friends.

If the laws were made for nobody but creditors, this might be a very good argument; and, upon the same principle, a law which devoted the debtor to the halter might be defended on the ground that his friends would come forward to save him from an ignominious death. If it be proper that the debt should be paid, on default of the debtor, out of the pockets of his friends, let a law to that effect be passed; but let not a mischievous system be continued for the purpose of obtaining a casual and infrequent benefit. The expectation that the friends of a debtor may thus be made answerable for claims upon him has also a pernicious effect upon credit, inducing tradesmen to trust improvident persons who happen to possess good connexions.

4. But it is said that, so far from the system of credit being bettered by the abolition of arrest, it would materially suffer, and be injuriously diminished by such a change.

Whether, in fact, credit is in any degree affected, unless it be injuriously, as we have just stated, may well be doubted. That it is not difficult to be obtained in cases of small sums, for which the party cannot be arrested, furnishes a tolerably strong argument that it would not be withheld in transactions of a larger amount. From the evidence of bankers, merchants, and other persons involved in large commercial concerns, it appears that, in giving credit, the power of arresting the party seldom enters into their calculations.

5. Assuming that taking away the power of arrest would be prejudicial to the creditor, it is said that it would also be prejudicial to the public, inasmuch as the creditor, to make up his losses, would increase the charge on the solvent customer.

This argument proceeds upon an assumption, that the creditor would sustain a loss by the abolition of arrest. This we deny.

But, independently of this, the Commissioners are of opinion, that "the ready money price must always be the standard for estimating the credit price, and no solvent customer who deals on credit will give more than the reasonable credit price, estimated in reference to the ready money price and the period of credit allowed."

The above are the principal arguments in favour of the present law, as we find them scattered through the Report. We shall now proceed to state, in our own words, the principal objections urged by the Commissioners to the system of arrest upon mesne process.

1. It is not unfrequently abused to the worst purposes. They state that not only from their own experience, but from the communications made to them, they have reason to believe that arrests are by no means unfrequent where no debt is due. "One instance of such abuse may be cited, where a mother was arrested by her son for a sum of 2,000*l.*, for the purpose of frightening her into an unjust settlement; another instance of a similar nature occurred lately, where a son arrested his own father for a large amount where nothing was due. In another instance, an uncertificated bankrupt arrested all his assignees to the amount of 40,000*l.* In another case, a party was held to bail for the sum of 14,000*l.*, by the mere trick of a prisoner confined in the Fleet for debt. Cases of great oppression have frequently occurred, where foreigners have been held to bail to a large amount, or thrown into prison from an inability to procure bail. Complaint has been made by the Consul of the United States of America in the port of Liverpool, that the masters of vessels are exposed to shameful impositions and extortions by arrest at that port for pretended debts; and that the abuse had become quite intolerable to masters of vessels from that country." To the instances of oppression mentioned by the Commissioners we may add the following, which occurred a few years since in a sea-port town. The captain of a Brazilian vessel, who numbered amongst his crew several able-bodied negroes, the property of his employers, being apprehensive that on his reaching the English port these men would take advantage of their situation, and, under the protection of the English law, escape from their servitude, resorted without scruple to the convenient remedy which the law of arrest afforded. Having sworn nine affidavits of debt, in each of which he stated that the wretched slave was indebted to him for money lent, he procured process to be issued out of a local court, under which the negroes were immediately seized on board the ship, and conveyed to the gaol of the borough. Here they were to lie until the vessel was ready for sea. At the expiration of a month, the captain, having disposed of his cargo, went to search for his crew in the place

where they had been so safely deposited. Accompanied by his attorney, and a number of ruffians, for the purpose of seizing the men as they quitted the walls of the prison, he presented a discharge, in all the suits, to the gaoler, and demanded the release of the prisoners. An objection, however, now arose not usually taken on such occasions; the defendants with one voice declared their determination not to quit the prison, well knowing that once without its walls they should be again consigned to their bondage. Their fellow-prisoners protested that they should not be carried away by force, and the gaoler, with laudable humanity, refused to render any assistance to the disappointed plaintiff, who was thus compelled to quit his prey. An inquiry having been instituted by some persons, to whose ears these facts had come, the men were set at liberty, and the captain sailed without his debtors, happy in having escaped a criminal prosecution.*

Even where there is a debt actually due, the process of arrest is frequently abused. "In numerous instances," say the Commissioners, "the practice is capable of being abused, and we believe is abused, for malicious purposes, by arresting the debtor on a sudden, without previous notice, and when he is not likely to be prepared with bail, or at such a place or season that he cannot possibly obtain his discharge without considerable delay or expence; or where, under the peculiar circumstances, an arrest is likely to be very prejudicial. These abuses are, we have reason to believe, very common in cases of bills of exchange, which are often bought up by persons who make a trade of it, and who, as a matter of course, when such bills become due and are dishonoured,

* How common such practices as these are appears from the following extract from the *Morning Herald*:—

"*Crimping*.—Dalton, Driscoll, and others, who were found guilty at the last Old Bailey sessions of forging seamen's wills, form part of a numerous gang of crimps, who have been for some years plundering the poor sailors in the employment of the East India Company. There is now in Whitecross-street prison an unfortunate seaman at the suit of Dalton, who has sworn a debt of 20*l.* against him, for refusing to allow Dalton to receive his wages, and to lodge at Dalton's house, where he and some of his messmates had been previously robbed. An application is now in progress to the Court of King's Bench for his discharge, on the ground of Dalton being a convicted felon. A few days ago a young sailor, a native of Scotland, who had been absent from his country nine years, was arrested by a crimp for 21*l.* and lodged in Whitecross-street prison. The sailor's mother had sent his sister from Kirkcaldy, beyond Edinburgh, to London, to receive him upon his arrival, and the sister very prudently took possession of his wages, which amounted to upwards of 20*l.* The crimp, whose plan was defeated by this precaution, swore at once to a debt exceeding the sum, and fixed the lad in gaol. A Scotch gentleman, upon being informed of the transaction by the sister, employed Mr. Broughton, an attorney, who paid the crimp 5*l.* for the discharge from the debt. The system pursued by the majority of the crimps with those sailors whom they prevail upon to lodge with them is this:—They give to the sailors a constant supply of gin, and actually ship them off for fresh voyages before they regain their senses, and without a farthing in their pockets. About twelve months ago several seamen, who were locked up in Whitecross-street prison, obtained their discharge in consequence of the publication of their cases, which were attended with similar circumstances."

immediately arrest all the parties to them. The buyers of such bills, for obvious reasons, usually employ their own confidential bailiffs, and the bailiffs themselves are in some instances connected with money lenders, who supply relief to debtors in difficulties on terms which serve but eventually to plunge them deeper into distress."

2. The imprisonment consequent upon arrest is prejudicial. It is prejudicial both to the debtor and to the creditor. When it ceases to be an instrument of duress, its consequences are unmingled evil. A man struggling with misfortunes is arrested, and sent to prison; means of satisfying the debt he has none, and he in vain endeavours to procure bail: his only chance of retrieving his affairs was in his personal superintendence of them, and in his unremitting diligence. Here, then, at once is the termination of his hopes; the ruin of himself and of those dependent upon him is consummated; and poverty, disgrace, and captivity, are his portion. And what is the place to which a man like this is conveyed? A close and crowded prison, probably fatal to his health, but still more fatal to his moral habits. Within its walls he must remain, not to work out the demand of his creditor, but in loathsome idleness to gratify his vindictive feelings. Day after day he sees the convicted felon leaving its walls freed from imprisonment, but the hour of his own liberation is as far distant as ever; till at last either his creditor, weary of vengeance, releases him from his bondage, or death affords a more effectual relief.

But in what manner does the imprisonment of the debtor affect the interests of the creditor? The debtor either has the means of satisfying the debt or he has not. If the former, those means ought to be made immediately available to the creditor, who ought not to be compelled to adopt the circuitous proceeding of forcing them from his debtor by the terrors of a prison. And even those terrors are often exerted in vain; the hardened and fraudulent debtor choosing rather to endure the restrictions of a gaol than to part with the property which he has no right to retain. But what is the benefit to be derived by the creditor from enclosing within the walls of a prison a man from whom that process must fail to extract a single shilling? Were he suffered to remain at large, some chance at least there might be of his being, in the course of time, enabled to defray the demand upon him, while, at the same time, his exertions would not be lost to his family; but, shut up within the walls of a gaol, his life and his labours are lost to his creditors as well as to himself.

The absurdity, nay, the wickedness of thus immuring like criminals men whose misfortunes are frequently their only offences, did not fail at last to press upon the attention of our lawgivers; and a system has been established, which, though it has in some

degree mitigated the evil, is in principle highly objectionable. The Insolvent Law does, it is true, relieve the debtor from his imprisonment upon the surrender of his property; but before this relief can be effected, much of the mischief which the practice of arrest produces may have been accomplished. If it be desirable that, in addition to the cession of his effects, an insolvent debtor should sustain some personal punishment,—a position which it would be difficult to establish—why is it that all *traders*, by whose failure much more distress is caused than by the insolvency of the former class of persons, are exempted from any such infliction, and are allowed to preserve their personal liberty upon the surrender of their effects? The operation of the Insolvent Law, in affording relief to the honest debtor, is thus stated by the Commissioners:—

“ In the first place, so far is the present law from giving relief to the honest but unfortunate debtors, that it leaves them exposed to nearly all the evil consequences to which they were liable before its introduction. An imprisonment of two or three months, or even of shorter duration, is usually quite adequate to the ruin of a trader, in morals, as well as credit and character. His habits of honest industry are interrupted; his connexions in business, profession, or trade, broken off; his family left destitute: he is compelled to associate in idleness with the dissolute and depraved; and after having been almost compelled to apply a part of his creditors' property to obtain his liberty,—with contaminated morals, broken spirits, at all events with a stigmatized character,—he is turned adrift upon society, but too often for no other purpose than, for want of honest employment, to put in practice the lessons which he has learned at the school which he has just left.”

We may here observe, that the Commissioners have entered at some length into the subject of insolvency and bankruptcy in connexion with the present state of the Insolvent Law; but this affords so wide a field of discussion, and is in itself a topic of so much importance, that we shall defer the consideration of it to another opportunity.

3. The expence attending the process of arrest is prejudicial. Not only is the expence which a debtor must incur before he can defend the suit an unreasonable exaction, but in some cases it actually compels him to submit to a demand which he has not the means of resisting.

“ It appears to us,” say the Commissioners, “ that it is not consistent with reason, or with any principle of political convenience, that a defendant should be compelled to pay so large a price as the condition (in effect) of resisting the plaintiff's claim. The consequences are exceedingly burthensome, as we have already observed, when the debt is small; and the money so paid is, as far as the parties are concerned, absolutely annihilated,—whilst it is lost to the defendant, it is not gained by the plaintiff.

“Were a scale to be made of the average expences of putting in bail, and were it to be enacted, that every debtor, on arrest, who did not pay or settle with his creditor should either go to gaol or pay him the average price of liberty, as the condition of being allowed to defend, the law would probably be deemed to be harsh and unreasonable, but in effect the present law is more so; in the one case the amount paid is wholly lost to both parties, in the other it would be applied to the benefit of one or the other, or of both.”

The amount of expence under this system is calculated by the Commissioners at not less than 300,000*l.* a year, including the charges attending the arrest and imprisonment of the debtor, bonds and recognizances of bail, proceedings consequent thereon, and the obtaining the discharge of the prisoner under the Insolvent Acts; and exclusive of the loss sustained from the inability of the persons imprisoned to prosecute their ordinary labours.

4. The practice of arrest is mischievous in permitting a creditor to become the judge in his own cause. “The claimant in this instance, contrary to a salutary rule of law, is allowed to constitute himself the judge as well as witness in his own cause; and, by a singular inversion of the ordinary course of justice, is permitted to issue an execution against the body of the supposed debtor, in the first instance, without the imputation of any fraud, or even of any intention on the part of the alleged debtor to withdraw his person or his property from the claims of justice; without any suggestion that payment has been demanded and refused; and without any surmise that such a step is essential to the ends of justice, or necessary for the security of the plaintiff.”

The Commissioners, though opposed to the system of arrest as it at present exists, admit the necessity of retaining it with great modifications. Where a debtor is about to abscond, it is not unreasonable that his person should be subjected to restraint until the creditor has some security given for his appearance. The Commissioners, therefore, propose—

That no one shall be arrested for debt, unless the plaintiff, or some one on his behalf, shall make oath that a debt to the amount of twenty pounds is due, and that he believes the defendant is about to abscond;

Or unless a judge of one of the superior courts shall make a special order of arrest;

That the party may be arrested either in the first step in the cause, or in any subsequent stage of the cause;

But that in all cases of arrest it shall be competent to the party arrested to apply to the court, or a judge, for relief.

Connected with these alterations, the Commissioners recommend certain improvements in other branches of the law.

“The mischiefs and inconveniences of which creditors chiefly com-

plain, and against which the power of arrest is no effectual remedy, may be greatly alleviated, if not wholly removed—

“By providing cheaper and speedier means for the recovery of such debts as are usually the foundation of arrests;

“By providing that interest shall be recoverable upon all debts, from the commencement of the action down to the time of execution;

“By enabling creditors to recover the full amount of costs reasonably incurred in prosecuting suits;

“By affording creditors a more summary remedy on written and particularly mercantile securities;

“By holding out inducements to debtors to make a cession of their property, at an early stage of their difficulties, for the benefit of creditors.”

With regard to arrest in execution, the Commissioners propose that no debtor shall be liable to personal arrest and imprisonment on any judgment obtained against him, in respect of which he would be entitled to petition and obtain his discharge under the present insolvent law, provided he forthwith give security for making an immediate cession of his property for the benefit of his creditors, and for conforming in all respects with the insolvent law. But that, in order to prevent fraud, the creditors should be at liberty, as well after as before judgment, by a judge's order, under special circumstances, or upon an affidavit of belief that the debtor intended to delay the creditor by absconding, to arrest his person; it being competent for the debtor in such case to obtain his discharge either by a judge's order, or by putting in bail for his appearance, and conformity with the insolvent law. They also propose that all property now distributable under the bankrupt and insolvent acts should be liable to satisfy the claims of the judgment creditor, and that the imprisonment of the debtor should not be held to be a satisfaction of the debt.

There are several other excellent suggestions in the Report, which we shall take an opportunity of noticing in another place.

We shall now proceed to examine the separate report of Mr. Serjeant Stephen, who, not coinciding in the opinions of his brother Commissioners, has stated his views in a “Supplementary Paper,” attached to the Report. It was with much regret that we found this gentleman dissenting from the judgment of his brethren. That he is an able and intelligent man we well know, and the document before us is a proof of his elaborate industry. To what cause it is owing that he should have been prejudiced in favour of a system which, in our judgment, is incapable of any sound defence, we do not know, but we feel assured that the reasons given in the supplementary paper will not carry that conviction to the minds of others with which they seem to have impressed his own. He has stated his views in distinct propositions under the separate heads of arrest before judgment, and arrest after judgment. These we shall give in their order, accompanying

them with such observations as may seem necessary, with reference to what we have already said on the subject.

"1st. If the power of arrest before judgment be taken away, the creditor will be much more frequently defeated by the absconding of the debtor."

In cases where the debtor is likely to abscond, the other Commissioners, as it has been seen, recommend the continuation of the power of arrest. This objection, therefore, falls to the ground.

"2d. If the power of arrest before judgment be taken away, the creditor will be much more frequently defeated by the removal of property."

In support of this proposition it is said that a fraudulent debtor often employs the interval between the commencement of a suit and the obtaining of judgment, in protecting the property from execution, by concealment, removal, or fraudulent assignment, and that the restraint of his person is a very powerful check upon all such machinations. So it truly is; but upon what ground is it that we are to presume a fraudulent intention in all debtors, and upon what principle are we to imprison them for a *suspected* crime? Let the act of fraudently defeating an execution be made an indictable offence, if that severity be necessary, but let the offence be committed before the punishment is inflicted. Certainly the scheme of imprisoning a whole class of persons, because some of them may possibly be inclined, if left at large, to defraud their creditors, has no parallel in our own or any other code of laws.

"3d. If the power of arrest before judgment be taken away, it will be much more frequently impossible to obtain payment without suit, and the attempt to recover payment by suit will be more frequently unsuccessful, and will be attended in general with more delay and expence."

These positions are supported merely by a reference to the evidence of various persons, all of whom are of opinion, with Mr. Bondum, that an arrest is a very good thing. "The fear of arrest," say Messrs. Crosse and Co., soap makers, Hull, "is a great means of keeping a debtor attentive to the claims of his creditor, and if removed very considerable mischief and inconvenience would follow." "It is found that those who proceed quietly to arrest generally get paid," say Messrs. Brandrum, Brothers, and Co., "while the indulgent creditor is too often left in the lurch." We are far from being convinced by a long series of such *dicta* as these; and we have already taken the opportunity of stating that, as it appears from the official returns, the opinions of these gentlemen are not borne out by facts. Mr. Serjeant Stephen has indeed attempted to

overthrow the inference which the other Commissioners have drawn from these returns, but, in our opinion, without success.

"4th. If the power of arrest before judgment be taken away, it will (like the abolition of arrest in execution) encourage the rash and fraudulent contracting of debt, and the dissipation of the property out of which the creditor should be paid."

To this we reply, that the man who gives credit to a knave, relying on the efficacy of a bailable writ, rests on a broken staff. The rash man never thinks of being arrested, and the fraudulent man imagines he can evade it. Is it pretended that there is no rash and fraudulent contracting of debts above fifty pounds? In fact, it is the power of arrest itself which encourages "the rash and fraudulent contracting of debts," by giving a false confidence to the tradesman. Debts like these are contracted by persons who have not the means of payment, and who, if arrested, would merely avail themselves of the insolvent law, and thus speedily free themselves from their imprisonment. The only true security for tradesmen against this class of customers is that prudent circumspection which will prevent the necessity of having recurrence to either bailable or serviceable process.

Why abolishing the practice of arrest should encourage the dissipation of the debtor's property we do not clearly see. That imprisonment has frequently, and in some degree *always*, this effect, we well know. How many instances are there perpetually occurring, of men living in gaol, and subsisting, even luxuriously, upon the means which ought to be distributed amongst their creditors? And how does imprisonment operate to prevent the dissipation of property? Will it not have the effect of rendering the man, who was before ready to defraud his creditors, still more eager to effect that object? Against an unjust or improper dealing with the property, the true remedy is not the absurd and clumsy one of shutting up the debtor in the walls of a prison, but the giving all the facilities to the creditor which quick and cheap law affords. This would enable him to pay himself out of the property itself, and not leave him to the barren remedy of seizing the debtor's person.

We shall now, reversing the order of Mr. Serjeant Stephen's argument, proceed to consider his objections to the abolition of arrest after judgment:—

"1st. If the power of arrest in execution be taken away, the creditor will be much more frequently defeated, by the concealment of the debtor's property."

The man who conceals his property will be very likely also to conceal his person. If he has the fraudulent intention of removing

his effects, is it probable that he will be deterred from putting it into execution from the mere apprehension of the contingency of an arrest? If he be taken, the Insolvent Court is open to him; and the more fraudulent he is, the better chance he imagines himself to have of being discharged, and yet saving his property. But independently of these considerations, is the power of arrest a proper remedy, and properly applied, to prevent the concealment of effects? The creditor is the only judge of the propriety of its application, and he necessarily acts upon mere suspicion. This, as we have already observed, is contrary to all sound principles of jurisprudence.

“2d. If the power of arrest in execution be taken away, the debtor without property will have no inducement to make those efforts by which he now often succeeds in obtaining the means of payment.”

It is really an ingenious plan to shut up a man without property within the four walls of a prison, in order to enable him to obtain the means of payment! Persons of ordinary understanding would suppose that such a situation was not well calculated to increase the means of a man without property. But the object of imprisoning a man under such circumstances is not to procure the debt from *him*, for the creditor well knows that he cannot gather figs from thorns: the object is to compel the friends of the party to rescue him from the dreadful evils which a protracted imprisonment occasions, by discharging the debt themselves. We have already observed upon the injustice and hardship of this proceeding, and we repeat the remark, that the hope of thus extracting from the purse of others the sums for which the debtor ought alone to be liable, is frequently the ground for giving an improper credit.

According to Mr. Serjeant Stephen, the *only* inducement which a man has to pay his debts is the fear of imprisonment. Is the desire, then, of once more becoming independent no inducement? Is the hope of supporting himself and his family no inducement? Is the wish to stand well with society no inducement? Or, if these motives fail, is the love of acquisition, the knowledge that he can possess no property till he has satisfied the claims of his creditor, no inducement? It is the vice of our laws that they only appeal to the bad and base passions of mankind, that they profess to govern by the operation of fear only, and that no account is taken of the more noble and generous motives by which even the worst members of society are more or less actuated. The notion of Mr. Serjeant Stephen, that a man will make no effort to pay his debts, unless under the operation of imprisonment, is in strict conformity with this vicious and dangerous principle.

“3d. If the power of arrest in execution be taken away, the burthen

and risk of realising the property of the debtor will be constantly thrown upon the creditor, instead of being incumbent, as they ought to be, upon the debtor himself."

Here, again, we must remark, that it is a somewhat singular mode of enabling the debtor to realise his property, to shut him up within a prison, and thus to prevent him from taking any part in the management of his affairs. At the very moment when his presence is most necessary to save him from ruin, when, if able to convert his property into money, it must in his absence be done at a destructive sacrifice, he is thrown into gaol, in order that the creditor may not be at the trouble of seizing his effects, but may extract the amount from his necessities by the duress of imprisonment. King Richard took the same speedy and efficacious mode of "realising the property" of the Jews, when with every tooth he drew from them a pound of gold. The system recommended by Mr. Serjeant Stephen differs not in principle. Let every facility be given to a creditor who seeks for his debt out of the effects of his debtor, but let not a barbarous and absurd mode of compulsion be adopted, which is, we feel persuaded, equally injurious to the creditor and to the debtor.

"4th. The abolition of arrest in execution will encourage the practice of contracting debts improvidently, or with the direct purpose of defrauding the creditor; and will also encourage the debtor to dissipate property which ought to be applied to payment of his debts."

The remarks which we have already made upon this objection, as applied to the abolition of arrest before judgment, will prevent the necessity of re-considering the question here.

We have no space to notice the concluding portion of Mr. Serjeant Stephen's paper, but we cannot avoid pointing out the incongruity of his projected amendment in the law of arrest, by requiring a notice to precede the arrest, for the purpose of enabling the party to avoid it altogether, "by putting in bail to the action, or by rendering himself to prison." There is a third mode of avoiding imprisonment which Mr. Serjeant Stephen has not adverted to, and to which the notice would enable a debtor to have recourse, viz. escape or concealment.

We could have wished to give some account of the foreign law relative to arrest, and especially of the changes which have lately taken place with regard to it in the United States of America, where the power has been much restricted, and in many instances abolished; but we must defer these topics till a future occasion.

ART. IV.—HISTORICAL ILLUSTRATIONS OF THE
ENGLISH LAW.

"Now it is to be observed that oftentimes, for the better understanding of our bookes, the advised reader must take lights from our histories and chronicles."—*Co's Litt.*

No. II.—THE JUDGES.*

During the weak and inglorious reign of James I. the bench was graced with a judge whose splendid professional acquirements were equalled by his political integrity. Upon several great occasions, when the liberty of the subject was threatened, Sir Edward Coke stood forward in its defence, even at the hazard of losing that high judicial station, which, ultimately, he is said to have abandoned with tears. In the disputes between the common lawyers and the civilians, to the latter of whom the King's prejudices had attached him, Sir Edward Coke openly and boldly, in spite of the denunciations of his royal master, pursued the course which his conscience and his duty dictated to him, and by his firm example prevented his brother judges, on many occasions, from swerving into the measures of the court. He also distinguished himself greatly by the sound constitutional opinion which he delivered on the force and effect of proclamations, to which it was the King's wish to give the character of laws. The relation of the chief justice's spirited conduct on this occasion is too well known to justify a repetition of it here.† It is to be lamented that the conduct of Coke was not in every instance pursued by his brothers, and that the judges of the Exchequer were prevailed upon, by court influence, to pronounce a judgment altogether at variance with constitutional principles.‡

The most remarkable instance of judicial corruption which our annals afford occurred during the reign of James I., in the person of Lord Bacon, the story of whose delinquency is so familiar to every one. The usual accounts of Bacon's corruptions are taken from the evidence adduced on his trial, as given in the *State Trials*; but some curious instances of his malversations, described in the proceedings of the House of Commons, are less known, and we shall therefore venture to transcribe a few passages. Previously to the proceedings against the Chancellor, several petitions complaining of bribes received by him were presented to the House of Commons. In one of them the petitioner stated "that he had given to the Chancellor, then Lord Keeper, in plate 52*l.* 10*s.*; and by the hands of Sir Richard Young, 400*l.* in a bag or purse;

* Continued from p. 37.

† See 12 Rep. and the article *Coke*, in the *Biog. Brit.*; see also Lodge's *Illustrations*, vol. iii. p. 364.

‡ See *Bates's case*, *Lanc's Rep.*, and *St. Trials*.

that Sir Richard Young told him he had delivered it to the Lord Chancellor, who returned thanks to the petitioner, and said that he had not only enriched him, but laid a tie on him to do him justice in all his rightful causes." The account of this transaction given by Sir Richard Young is very graphical; he said "that the Lord Chancellor was of this gentleman's counsel when he was Solicitor and Attorney General; that himself and Sir George Hastings did, at Mr. Egerton's entreaty, deliver a purse of money to the now Lord Chancellor, he then being busy at his chamber at Whitehall; that when they first offered it to his lordship, *he gave a step back, making some doubt whether he might take it or no, yet took it*, saying it was true he did Mr. Egerton the best service he could when he was of his counsel, and therefore he would take it."*

These petitions, which were examined into by the committee "concerning abuses in courts of justice," were communicated by Sir George Hastings to Bacon, who replied that he should deny the charge on his honour. Fierce debates on the subject ensued. Mr. Christopher Nevill said, that "they are bitter waters which flow in the Court of Chancery;" that he would not have the Chancellor deny the charge on his honour, but on his oath, "and if he will deny a truth, let it be with the peril of the forfeiture of his soul. He sitteth like a Minotaur in the labyrinth of that court, gormandizing and devouring all that comes before him."

Another petition was presented by a person of the name of Abry, complaining of bribes received and justice delayed. Sir George Hastings, being required by the house to declare what he knew of this business, stated "that about three weeks since the Lord Chancellor sent to him to Hackney, to come to speak with his lordship at York-house, and being in the Lord Chancellor's chamber, his lordship, commanding all to depart out of the chamber, said, 'George, I hope you love me, and desire not that any thing you have done should reflect to my dishonour. I fear there is one Abry purposeth to petition and clamour to the parliament, that you gave me from him 100*l.*; is it true, George?' Whereto Sir George Hastings answered that it was true, that he did deliver the 100*l.* to his lordship; whereto his lordship answered, that if he had any interest in Abry, he would have him endeavour to stay the petition; and thereon Sir George spoke to Abry, and procured from him the petition, and brought it to the Lord Chancellor, who on sight of it appointed Abry to attend with his counsel, and his lordship would hear the case again; and accordingly Abry and his counsel attended, but could not be heard, whereupon Abry petitioned this house."†

* Proceedings of the Commons in 1620, vol. i. p. 161.

† Ib. p. 195.

The scene presented in the following passages might almost be painted:—"The petition of Mr. Edward Willoughby and his wife, and Mr. Montague Wood and his wife, and others, against the Lord Chancellor, showing and complaining that there was a decree made by the Lord Chancellor, without any order made in court; and that the said decree was brought into the Chancellor's Court, to be there signed; and that for the making and signing this decree, which was made in the behalf of the Lady Frances Wharton, the said lady did give the Lord Chancellor 300*l*." Keeley, Lady Wharton's attorney, being ordered to attend, gave the following account:—"That about the time of the passing of the decree the Lady Wharton took 100*l*., and put it in a purse for to give the Lord Chancellor, as she told him, and made him write down the words that she should use when she did present the same to the Lord Chancellor; that after the lady was returned from the Lord Chancellor she told him, *that his lordship seeing her hold the said purse and money in her hand, while she was in his chamber, his lordship asked her what she had there in her hand, whereto she said it was a purse of her own working, and so presented it to his lordship, with 100*l*. in it; and withal promised his lordship 200*l*. more when the decree should be signed and passed.*"*

Lord Bacon does not appear to have been scrupulous with regard to the shape in which the bribes were offered to him. In one instance he received "a dozen of buttons of the value of 150*l*." in another, a cabinet worth 800*l*.; and from the apothecaries, in a suit between them and the grocers, a rich present of ambergrease, worth 150*l*. It is almost incredible that Bacon, while thus in the habit of yielding to the grossest corruption, should have found sufficient countenance to caution Mr. Justice Hutton, on his appointment, in the following manner:—"That your hands, and the hands of your hands (I mean those about you), be clean and uncorrupt from gifts, from meddling in titles and serving of turns, be they great ones or small ones."

The justice of Bacon's sentence was admitted by himself, though he attempted to extenuate his guilt by a reference to the corruptions of the day. "For the briberies and gifts wherewith I am charged, when the book of hearts shall be opened, I hope I shall not be found to have the fountain of a corrupt heart, in a depraved habit of taking rewards to pervert justice; howsoever I may fail, and partake of the corruption of the times."

During the reign of James I. the system of soliciting the judges on matters pending before them, was probably carried to a great extent. On a debate in the Commons, respecting the administra-

* Proceedings of the Commons in 1620, vol. i. p. 202

tion of justice, Mr. Weston, a member of parliament, desired "that in the bill against bribery, it might be considered of bribery of affection as well as with money, and that there might therein also some order be taken against sending of letters, from great men and others, to such as are in places of judicature." During the same debate, Sir Edward Moseley, the attorney of the duchy, adverted to a practice which is still too prevalent: he moved, "that judges may not be permitted to have their favourites and their sons to plead so ordinarily before them; for the judge's affection to such advocates oftentimes swayeth more than the solidest reason of the lawyers of the adverse party."*

The reign of Charles I. was a period of sore and perilous temptation to the sages of the law. To secure their voices was an object of the utmost consequence to the court. The King soon learned the value (to use the language of Clement Walker) of the old tyrannical trick, "To rule the people by the laws, but first to overrule the laws by the lawyers; and therefore *ut rei innocentes pereant, fiunt nocentes iudices*,—that true men may go to the gallows, thieves must sit on the bench." Every art was resorted to by the court to win over the judges; but at first they displayed a temper not very favourable to the wishes of the King. In the year 1626, Sir Randolph Crew, the Chief Justice of England, a man highly esteemed, and indeed beloved for his virtues, was suddenly displaced, on account of the reluctance manifested by him to the mode adopted by the court of raising money by forced loans. In the proceedings which ten years afterwards took place with regard to ship-money, Hollis represented the case of the Chief Justice to the House of Lords:—"He kept his innocence when others let theirs go, when himself and the commonwealth were alike deserted, which raises his merit to a higher pitch: for to be honest when everybody else is honest, when honesty is in fashion and is trump, as I may say, is nothing so meritorious; but to stand alone in the breach, to own honesty when others dare not do it, cannot be sufficiently applauded, nor sufficiently rewarded."†

The following incident, which occurred in the year 1630, and which we give in the words of Kennet, shows that at this period of Charles's reign the bench yet sustained its independence:—"Huntley, a minister in Kent, having been censured and imprisoned by the High Commission Court, brought now his action of false imprisonment against the Keeper, Mr. Barker, and some of the Commissioners by name. The Attorney-general moved that the action might lie against the Keeper only, and by no means against any of the persons in the High Commission; but, after

* Proceedings in Parliament in 1620, vol. i. p. 336.

† Rushworth, vol. ii. p. ii.; Appendix, p. 267.

long debate, the court ordered that two of the Commissioners should answer. The Bishop of London made the King sensible that the authority of the High Commission Court would fall to nothing, if the judges of it must be now exposed to personal actions. Upon which the King sent his advocate, Dr. Ryves, to the Lord Chief Justice, requiring him to proceed no farther in that cause till he had spoken with his Majesty. The Chief Justice answered, 'We receive the message,' and then consulted with the judges; and they came to this resolution, 'That they conceived such a message not to stand with their oaths, which commanded an indefinite stay of a cause between party and party, that might stop the course of justice so long as the King would;' and they farther declared the doctor to be no fit messenger, all the messages from the King to them being usually by the Lord Keeper or the Attorney-general, in causes relating to the administration of justice. By the court's desire, the Chief Justice acquainted the Lord Keeper and the Bishop of London, who both agreed that the message was mistaken, and that the King's mind was not to command a stop, but to desire as much slowness as might stand with justice. After this, upon the importunity of the Commissioners, who would no longer act if thus exposed to suits at common law, the King assumed the matter to himself, and sending for the judges, 'charged them with express command that they should not put the Commissioners to answer.' The judges stoutly replied that they could not, without breach of their oaths, perform that command. The matter was afterwards handled at the council table in presence of the judges, where, after long hearing, it was determined that the judges had done their duty."

In the impeachment against Laud we find the following article, which there is but too much reason to believe was founded in fact. It was said, "that by letters, messages, threats, and promises, and divers other ways, to judges and other ministers of justice, he had interrupted and perverted, and sought to interrupt and pervert, the course of justice in the courts at Westminster and elsewhere, to the subversion of the laws of the kingdom; whereby sundry of his Majesty's subjects had been stopped in their just suits, deprived of their lawful rights, and subjected to his tyrannical will, to their ruin and destruction."* The unconstitutional practice resorted to

* 4 Rushworth Coll., 296. Neale (Hist. Pur. b. 2, c. 3) gives the following character of the judges before the long parliament:—"The judges were generally of a stamp that, instead of upholding the law as the defence and security of the subject's privileges, set it aside on every little occasion, distinguishing between a rule of law and a rule of government. They held their places during the King's pleasure; and when the prerogative was to be stretched in any particular instance, Laud would send for their opinions beforehand, to give the greater sanction to the proceedings of the council and the Star Chamber, by whom they were often put in mind that if they did not do the King's business to satisfaction they would be removed."

by James I. of requiring extra-judicial opinions from the judges was continued; and, under the sanction of an authority thus obtained, the court proceeded to exact the illegal tax of *ship-money*. This odious and fatal measure is said by Clarendon to have been proposed by Noy, and for some time no effectual resistance was made to the claim. At length, upon the refusal of some of the counties to contribute the sums at which they were assessed, the King thought proper to take the opinion of the judges upon the legality of his proceedings, and to their deep and lasting disgrace an answer was obtained recognizing and confirming the King's prerogative. This opinion was triumphantly published by the Lord Keeper as "a thing not fit to be kept in a corner," but "to be published throughout all parts of the kingdom that all men might take notice thereof." * In due course of time it was indeed noticed according to its merits; and the men who had so shamefully prostituted the high character of their office suffered, by the impeachment of the Commons, the degradation and disgrace befitting their great offence. Some of the judges had indeed virtue sufficient to resist both the smiles and the menaces of the court, amongst whom was Sir George Croke, who was thus nobly exhorted by his wife not to forfeit his conscience and his honour:—"She told him she hoped he would do nothing against his conscience, for fear of any danger or prejudice to him or his family, and that she would be content to suffer want, or any misery, with him, rather than be the occasion for him to do or say any thing against his judgment or conscience." †

On the commencement of hostilities between the King and the parliament, the latter proceeded speedily to express their sense of the corrupt and unconstitutional conduct of the judges. Those who had concurred in the judgment against Hampden were impeached;

* Of the conduct of the judges in the matter of ship-money, Lord Clarendon (then Mr. Hyde) thus spoke:—"There cannot be a greater instance of a sick and languishing commonwealth than the business of this day. Good God! how have the guilty these late years been punished, when the judges themselves have been such delinquents! 'Tis no marvel that an irregular, extravagant, arbitrary power, like a torrent hath broke in upon us, when our banks and our bulwarks, the laws, were in the custody of such persons. Men who had lost their innocence could not preserve their courage, nor could we look that they who had so visibly undone us themselves, should have the virtue or credit to rescue us from the oppression of other men. 'Twas said by one who always spoke excellently, 'That the twelve judges were like the twelve lions under the throne of Solomon; under the throne in obediences, but yet lions.' Your lordships shall this day hear of six, who (be they what they will be else) were no lions; but who upon vulgar fears delivered up the precious forts they were trusted with, almost without assault, and in a tame easy trance of flattery and servitude, lost and forfeited, shamefully forfeited, that reputation, awe, and reverence, which the wisdom, courage, and gravity of their venerable predecessors had contracted and fastened to the places they now hold."

† Whitelocke, p. 25.

and, to the astonishment of all who beheld it, Mr. Justice Berkeley was taken into custody while performing his official duties on the bench. During the first negotiations which took place between the King and the parliament, the appointment of the judges formed a prominent article, and several persons were named by the parliament as those whom they desired to see on the seats of justice. To this request was added the important recommendation, that in future the patents of the judges should run *quamdiu se bene gesserint*, and not *durante bene placito*.*

In consequence of some of the judges adhering to the party of the King, the two houses of parliament, in the year 1645, came to a vote that it should be referred to the Commissioners of the Great Seal to consider of fit persons to be judges in the room of those who were either dead or displaced,† and three new judges were consequently appointed.‡ Soon afterwards an ordinance was passed, declaring five of the judges to be disabled, and their appointments to be void, for having deserted their places, and advised and assisted the war against the parliament.§ On the other hand, the Oxford parliament issued a declaration, pronouncing the commissions of the judges under the great seal at Westminster to be high treason.|| From this period parliament assumed the power of filling up all the vacancies on the bench, and several appointments were accordingly made, till at length, on the abolition of the kingly power, the bench was remodelled.

On the death of Charles I. and the establishment of the commonwealth, the judges had a difficult part to act. On the one hand, to receive their commissions from the new government would be to acknowledge its lawfulness, and to become abettors of that which most of their body could not but regard as treason. On the other hand, to leave the justice of the country unadministered involved greater evils than the acknowledgment of any illegitimate power; for under every form of government crime is to be repressed and redress of wrongs distributed. Upon this momentous question the twelve judges were equally divided, and while six resigned their seats, the remainder signified their willingness to continue in the exercise of their offices, provided the House of Commons agreed to a declaration that they were resolved to maintain the fundamental laws of the nation,¶ and passed an act repealing the oaths of allegiance and supremacy. This was accordingly done, and an oath well and truly to serve the parliament

* Lords' Journ., Jan. 30, 1643. Godwin, vol. i. p. 39.

† Journ. Com., Aug. 27.

‡ Ibid. Sept. 30.

§ Journ. Lords, Nov. 24.

|| Whitelocke, Nov. 19. Godwin's Commonwealth, vol. ii. p. 45.

¶ Journals, Feb. 8, 9, 1649. Godwin's Commonwealth, vol. iii. p. 11. Mr. Godwin has traced with much care the history of the changes on the bench during the time of the commonwealth.

and people was substituted. At the same time the title of the Court of King's Bench was changed to that of Upper Bench.*

During the protectorate the bench was filled by men of considerable eminence, and even Sir Matthew Hale did not refuse to accept his appointment at the hands of Cromwell, being advised by two eminent divines that, as it was absolutely necessary at all times to have justice and property kept up, it was no sin to take a commission from usurpers. The fearless honesty with which Hale discharged his judicial functions appeared in a case tried before him on the circuit, when a soldier was indicted for murder, in consequence of his having killed a man who had disobeyed the Protector's order that none who had been of the King's party should be suffered to bear arms. Under the direction of Hale the jury found the prisoner guilty; and notwithstanding the remonstrances and threats of Colonel Whaley, who urged that the soldier had done no more than his duty, Hale ordered the man to be executed speedily, lest a reprieve should be granted. It is said that for this Hale received a severe reprimand from Cromwell, who told him that he was not fit to be a judge; "It is very true," answered Hale.

When Cromwell found it necessary for the maintenance of his power to render the courts of law subservient to his government, he did not meet with all the facilities he expected. An ordinance having been made by the Protector and his council for the payment of customs for four years, Cony, a merchant of the City of London, refused to pay the duties, on the ground of their having been illegally imposed. Having been fined for his refusal by the Commissioners of Customs, he was committed, on his neglecting to pay the fine, for a contempt. He therefore applied for a writ of *habeas corpus*, and employed as his counsel Maynard, Twisden, and Wadham Windham, who argued with much earnestness against the legality of the imposition. The consequence was, that the counsel were committed to the Tower, and the case was ordered to stand over till the next term. In the meantime, Rolle, the Chief Justice of the King's Bench, signified to Cromwell the scruples with which his mind was filled with regard to the case,

* The following is the account of this transaction given in the Diary of the Earl of Leicester:—"Thursday, the 8th of February.—The new great seal was brought to the house and approved of; and the commissioners were ordered to send in the old great seal, which was brought in and broken in the House of Commons. The commissioners for the new great seal are Mr. Kebble, Mr. Lisle, and Mr. Whitelocke. And yet, for all these great alterations, proclamation was made in Westminster Hall, the 9th of February, by order of the House of Commons, that they did not intend to alter the statutes and fundamental laws of this kingdom; whereupon the three Chief Justices and the Chief Baron sate that daye in their courtés, with one judge more a-piece with them, which otherwise they refused to do."—*Blencowe's Sydney Papers*, p. 64.

and received his writ of ease, and Glyn was appointed Chief Justice in his room.*

Thorpe, one of the Barons of the Exchequer, and Newdigate, a judge of the Upper Bench, displayed their honesty in the same manner, by refusing to sit on the trial of certain persons arraigned for treason in compassing and imagining the death of the Protector; an act made treason by Cromwell's own ordinance. Understanding that they had been named in the commission for the trial of the prisoners, they requested that they might not be called on to discharge an office which their consciences disapproved.† This was not the last instance in which Cromwell found his judges refractory. The Court of Chancery being then considered, as it still is, one of the great grievances of the nation, the Protector made an ordinance, simplifying the process and reducing the expences of the court,‡ and issued his mandate directing the Commissioners of the Great Seal to proceed according to this ordinance. Whitelocke and Widdington, two of the three Commissioners, persisting, after a representation to Cromwell, in disobeying his mandate, were ordered to deliver up the seal, which was committed to the custody of Lisle, the third Commissioner, who had not been a party to the representation, and of Nathaniel Fiennes.§

The character given by Mr. Godwin of the judges during the protectorate, is, like some other parts of his work, a little too highly coloured; though it cannot be denied, that men of the first rate talent were placed by Cromwell on the bench. "The period," says he, "of the protectorate was eminently a period of accomplished lawyers. There have seldom existed, in any epoch of English history, men more profound in this science than St. John and Glyn, and Maynard and Hale, to whom we may add Whitelocke, Widdington, and Rolle. The judges of Charles II. sink into utter insignificance and contempt in this comparison."||

The judges of Charles II., though throughout that reign, generally selected (as they were by Clarendon at its commencement) "for their entire affections for his Majesty and for the laws," were far from being either insignificant or contemptible. Sir Matthew Hale long continued to grace the bench, and two of the greatest men, in point of legal talent, who ever presided over the courts of equity and common law, filled the posts of Chancellor and Chief Justice of the King's Bench during the reign of Charles II.—Lord Chancellor Nottingham and the Lord Chief Justice Saunders.

The wonderful legal tact and talent of Sir Edmund Saunders

* Godwin, vol. iv. p. 177.

§ Godwin, vol. iv. p. 182.

† Ibid. p. 181.

|| Ibid. vol. iv. p. 601.

‡ Scobell, 1654, c. 44.

might indeed have failed to ensure his promotion, had not his inclination to the wishes of the court rendered his appointment desirable. "When the court," says Roger North,* "fell into a steady course of using the law against all kinds of offenders, this man was taken into the King's business, and had the part of drawing and perusal of almost all indictments and informations that were then to be prosecuted, with the pleadings thereon, if any were special, and he had the settling of the large pleadings in the *quo warranto* against London." It might have been supposed that having been engaged as counsel in this highly important cause, there would have been some difficulty with regard to his presiding as judge on the trial of it; but so far, at that period, was the court from being influenced by any scruples of the kind, that Saunders was appointed Chief Justice, with the especial view of trying the *quo warranto*. The account given of his appointment by Roger North is as follows:—"The King observing him to be of a free disposition, loyal, friendly, and without greediness or guile, thought of him to be Chief Justice of the King's Bench at that nice time; and the ministry could not but approve of it. So great a weight was then at stake, as could not be trusted to men of doubtful principles, or such as any thing might tempt to desert them." He did not live to give judgment against the City of London, though his assent to the opinion of the court is said to have been conveyed by his brothers after he had lost his faculties.

Men of extremely indifferent character found a place on the bench during the reign of Charles II. Pemberton, the predecessor of Saunders, in the King's Bench, was a person of very dissolute habits. "He was," says Roger North,† "one of the fiercest town rakes," and having dissipated his fortune, he was sent to gaol. Here, having sufficient leisure, he studied his profession with diligence, and "at length came out a sharper at the law." According to the writer we have just mentioned, Pemberton "had a towering opinion of his own sense and wisdom, and rather made than declared law. I have heard," says he, "his lordship say that, in making law, he had outdone King, Lords, and Commons." Pemberton, however, though a rake, had some remains of honesty in his composition, and, in consequence of his not going all lengths with the court, was removed to make way for Sir Edmund Saunders.

Dissolute manners and a loose life seem, in the reign of Charles II., to have conferred a title to the bench. Sir William Scroggs was in no way inferior in these pretensions to Pemberton. "He was a great voluptuary," says Roger North, "and companion of

* Life of Lord Guilford, vol. ii. p. 45.

† Ibid. vol. ii. p. 38.

the high court rakes, as Guy, Ken, &c., whose merits, for aught I know, might prefer him. His debaucheries were egregious, and his life loose, which made Lord Chief Justice Hale detest him. * * He had a true libertine principle. He was preferred for professing loyalty; but Oates coming forward with a swinging popularity, he (as Chief Justice) took in and ranted on that side most impetuously."

When men of a character so depraved were placed at the head of the courts, it is not surprising that the administration of justice should fall into disrepute. Towards the close of Charles's reign numerous complaints were made in the Commons respecting the conduct of the judges, and resolutions were passed for the impeachment of Scroggs and others. On this occasion Mr. Booth, afterwards Lord Delamere, spoke thus plainly of the iniquity which disgraced the bench. "Let any one deny, if he can, whether our judges have not transgressed. * * Nay, the contagion has spread so far, that it is more difficult to find a case without these, or some of them, than to produce multitudes of cases where justice has been sold, denied, or delayed: so that our judges have been very corrupt and lordly; taking bribes and threatening juries and evidence; perverting the law to the highest degree; turning the law upside down, that arbitrary power may come in upon their shoulders. The cry of their unjust dealings is great, for every man has felt their hand, and therefore I hope that their punishment will be such as their crimes deserve, that every man may receive satisfaction."* Colonel Titus touched upon the true cause of this corruption:—"As long as judges hold their places *durante bene placito* they will do what will please, and there is an end of your justice."†

It is unnecessary to accumulate instances of the judicial delinquency which disgraced the reign of Charles II. The State Trials, and the memoirs of the day, exhibit every shade of it, from the unblushing and unprincipled profligacy of Scroggs down to the ambiguous honesty of the Lord Keeper North. The King himself did all in his power to demoralize the bench, and so little sensible was he to the claims of justice, that he did not hesitate personally to solicit the peers upon a judicial matter pending before them.

With the example of his brother before his eyes, it would have been singular indeed if James II. had not attempted to render the judges subservient to his political schemes. At the very commencement of his reign he adopted the system of displacing those who betrayed a reluctance to accommodate their consciences to his

* Lord Delamere's Works, p. 140, cited Harris's Charles II., p. 329.

† Grey's Debates, vol. viii. p. 58.

views, and in the course of his short government almost the whole bench were removed.* Even the royalist Sir John Reresby was shocked at these open assaults on justice. "This day," says he, "April 29, 1686, being the first of the term, a great change was made among the judges in Westminster Hall: there was a new Chief Justice of the Common Pleas and another new judge of the same bench; there was a new Chief Baron; in fine, four new judges of the several courts. This made a considerable noise, as the gentlemen now displaced were of great learning and loyalty, and whose only crime had been that they would not give their opinions, as several of their brethren had done, that the King by his prerogative might dispense with the test required of Roman Catholics. The next day I was informed by Mr. Jones, son to the Chief Justice of that name, lately turned out, that his father, upon his dismissal, observed to the King, that he was by no means sorry that he was laid aside, old and worn out as he was in his service, but concerned that his Majesty should expect such a construction of the law from him as he could not honestly give; and that none but indigent, ignorant, or ambitious men, would give their judgment as he expected! and that to this his Majesty made answer, it was necessary his judges should be all of one mind." Roger Coke has given another version of the same story:—"The King, to make a thorough reformation, will make the judges in Westminster Hall to murder the common law, as well as the King and his brother designed to murder the parliament by itself; and to this end the King, before he would make any judges, would make a bargain with them, that they should declare the King's power of dispensing with the penal laws and tests made against recusants out of parliament.

"However, herein the King stumbled at the threshold, for it is said he began with Sir Thomas Jones, who had merited so much in Mr. Cornish his trial, and in the west; yet Sir Thomas boggled at this, and told the King he could not do it; to which the King answered, he would have twelve judges of his opinion; and Sir Thomas replied, he might have twelve judges of his opinion, but would scarce find twelve lawyers. The truth of this I have only from fame; but I am sure the King's practice in reforming the judges, whereof all (except my Lord Chief Baron Atkins and Justice Powel) were such a pack as never before sat in Westminster Hall, gave credit to it."

Of Jefferies, the opprobrium of his age, it is unnecessary to speak: sins like his were sufficient to darken the whole of the century in which he lived. With him the race of corrupt judges

* See the List given by Mr. Sergeant Heywood, in his *Vindication of Fox's James II.*, and *State Trials*, vol. xii. p. 260.

may be said to have become extinct; and, with the exception of the Lord Chancellor Macclesfield, no instance of direct malversation in an English judge has occurred since the Revolution. Selected for their political tendencies they frequently may have been, and sometimes those tendencies have carried them beyond the strict boundaries of judicial propriety. Occasionally, also, men whose private characters would not bear a very severe scrutiny may have been raised to the bench, and ignorance and partiality may have been sometimes detected there; yet ever since the clause *durante bene placito* has been struck out of their patents, the judges of England have borne little resemblance to their predecessors.

ART. V.—REFORM OF ECCLESIASTICAL COURTS.

The Special and General Reports made to His Majesty by the Commissioners appointed to inquire into the Practice and Jurisdiction of the Ecclesiastical Courts. Authenticated edition. 12mo. Longman, 1832.

The duties of the right reverend and learned persons appointed by virtue of his Majesty's Commission to inquire into the practice and jurisdiction of the Ecclesiastical Courts, were, by the terms of the Commission, these:—"To make a diligent and full inquiry into the course of proceeding in suits and other matters instituted or carried on in the Ecclesiastical Courts of England and Wales, from the first process and commencement to the termination thereof; and into the process, practice, pleading, and other things connected therewith; and to inquire whether any and what parts thereof may be conveniently and beneficially discontinued or altered; and what (if any) alterations may be beneficially made therein, and how the same may be best carried into effect; and farther, to inquire into the jurisdiction of such courts, and whether such jurisdiction may in any and what respects, and in any and what cases, be beneficially taken away or altered."

Having been required by the Lord Chancellor to report specially and immediately on the jurisdiction of the Court of Delegates, and the expediency of transferring that jurisdiction to the Privy Council, the Commissioners made two Reports, the first confined to the subject of the Court of Delegates, and the latter entering into the various questions referred to their consideration. Of the former Report it is unnecessary to say more than that the recommendations contained in it have been adopted by the Lord Chancellor, and that a bill founded upon those recommendations

was introduced by him at the close of the last session of parliament.*

The *General Report* of the Commissioners is a document of a very interesting nature, exhibiting on the part of the elevated and learned personages from whom it emanates a greater tendency to alteration and improvement than might by some persons have been expected. We shall endeavour to give, in as succinct a form as possible, some account of the particular evils and inconveniences pointed out by the Commissioners, and of the mode in which they are proposed to be remedied.

This inquiry may be divided into two great branches:—1st, The subject matters at present within the jurisdiction of the Ecclesiastical Courts; and, 2dly, The manner in which that jurisdiction is exercised. In both large alterations are proposed by the Commissioners.

The various matters which form the subject of ecclesiastical jurisdiction are thus briefly stated in the Report:—

“The ecclesiastical jurisdiction comprehends causes of a civil and temporal nature, some partaking both of a spiritual and civil character; and, lastly, some purely spiritual.

“In the first class are testamentary causes, matrimonial causes for separation and for nullity of marriage, which are purely questions of civil right between individuals in their lay character, and are neither spiritual nor affecting the church establishment.

“The second class comprises causes of a mixed description, as suits for tithes, church-rates, seats, and faculties.

“The third class includes church discipline, and the correction of offences of a spiritual kind. They are proceeded upon in the way of criminal suits *pro salute animæ*, and for the lawful correction of manners. Amongst these are offences committed by the clergy themselves, such as neglect of duty, immoral conduct, advancing doctrines not conformable to the articles of the church, suffering dilapidations, and the like offences; also by laymen, such as brawling, laying violent hands, and other irreverent conduct in the church or church-yard; violating church-yards; neglecting to repair ecclesiastical buildings; incest, incontinence, defamation. All these are termed *causes of correction*, except defamation, which is of an anomalous character. These offences are punishable by monition, penance, excommunication, suspension *ab ingressu ecclesiæ*, suspension from office, and deprivation.”

Amongst the matters enumerated in the first class testamentary causes are the principal, and have accordingly received the largest share of the Commissioners' attention. They have not only taken into consideration the law relating to testaments, as administered in the spiritual courts, but have presented a view of the whole law,

* See the Parliamentary Proceedings, and the Review of the same, in the present number.

“whereby the disposition by will of property, whether real or personal, is governed.” After fully stating the various tribunals to which the cognizance of wills belongs, and the anomalies which exist with regard to the effect of the sentences or judgments of those different tribunals, they propose some large alterations, the principal of which is that the same solemnities should be required to render valid every testamentary disposition of every description of property, without any distinction, and that the validity of wills disposing of real or personal estate should be determined by trial in one and the same court, and the probate made final and conclusive evidence of title to real and personal estate. “We humbly think,” they add, “that by thus rendering the judgment of a competent court, unappealed from, or the judgment of a court of appeal on the merits, after proper warning given to all who have an immediate interest, final and conclusive evidence, in all courts, of the rights to real estate, additional security will be afforded to titles to real property, and some delay, doubt, litigation, and expence avoided.”

In the propriety of the first suggestion we quite agree. Whatever shall be the solemnities considered essential on the execution of wills of real property, there can be no doubt that they should extend also to testaments of personal property. Every argument applicable to the one applies also to the other.

With regard to the other proposition, that the validity of wills, both of real and personal property, should be tried in one and the same court, the reasons adduced by the Commissioners are, we think, unanswerable. But another question arises, which has been very unaccountably passed over in the Report, viz., what court shall possess this jurisdiction. The only passage in which anything like a reason is alleged for conferring this power on the spiritual courts is the following :—

“It is upon the supposition that our recommendations of the abolition of the jurisdiction of all the inferior courts, and the introduction of a *viva voce* evidence into the provincial courts, are adopted, that we have ventured to recommend that the validity of wills of land should be left to the decision of those courts.”

That the adoption of these recommendations would render the Ecclesiastical Court a less objectionable tribunal for this purpose, than it now is, we do not deny ; but it appears to us to furnish no ground whatever for preferring that tribunal to the courts of common law. It is admitted in the Report itself that testamentary causes “are purely questions of civil right between individuals in their lay character, and are neither spiritual, nor affecting the church establishment.” Why, then, is the jurisdiction over these instruments, which involve half the property in the kingdom, to be withdrawn from the ordinary courts of justice, to which the consider-

ation and construction of all other documents relating to property belong? Upon what possible principle should wills and not deeds be subjected to the sentence of a spiritual tribunal? The Commissioners seem to have been in some degree aware of the danger of having a separate tribunal for trying the validity of a particular class of documents, by recommending that if the ecclesiastical judge, or the parties, shall require it, the trial shall take place before a judge of one of the courts of common law. Why, then, not before a court of common law in every case? How much of the learning which is applied in the construction of wills is to be derived from a general knowledge of the common law, and how is it to be expected that the spiritual judge should be conversant with it? Again, the Commissioners recommend the introduction of the trial by jury, where either the judge or the parties shall think fit: and how much better qualified by the habits of his own branch of the profession, and by his judicial experience, is a common law judge to preside over such an inquiry? Why, we would ask, in the case of an appeal, is a man's property to be pronounced upon by the learning of the Privy Council, because he holds it under a will, when, if it had been conveyed to him by deed, his title must have been submitted to the intelligence of the House of Lords? Why is the abolition of the criminal jurisdiction of these courts advised (as we shall shortly see) if they are to be attended by juries, and to have the powers of common law courts?

It is justly stated by the Commissioners, that "there is no department of ecclesiastical jurisprudence of more vital consequence to the community than suits which regard the marriage state." In former times, when marriage was considered to be one of the sacraments, the church vindicated to itself the construction and regulation of the marriage contract. In later days, and with more correct views of the relation of husband and wife, the contract has been regarded as one of a civil and not of a spiritual nature; and matrimonial causes for separation, and for nullity of marriage, are stated in the report to be "purely questions of civil right between individuals in their lay character, and neither spiritual, nor affecting the church establishment." The observations which we have already made with regard to the jurisdiction of the spiritual courts over testamentary causes will, for the most part, apply also to matrimonial causes, which there is no reason whatever for separating from the ordinary tribunals of the country. Incidentally, the courts of common law take cognizance every day of the validity of marriages; and why the whole question relating to them should be withheld from their adjudication it is not easy to see. Even the Commissioners confess the necessity of assimilating the proceedings of the ecclesiastical courts to those of the courts of common law, for the trial of these causes, with this

distinction between matrimonial and testamentary causes—that while in the former the *judge* alone is to have the power of directing an issue to be tried by a jury, before himself or a common law judge, in the latter, the *parties* may insist upon the case being so tried. The grounds of this distinction are not stated, nor are they very obvious.

Upon the whole there appears to be no substantial reasons for suffering the spiritual courts to retain a jurisdiction over matters which are neither spiritual, nor affecting the church establishment.

We now come to the second class, or “causes of a *mixed* description, as suits for tithes, church rates, seats, and faculties.”

On the question of suits for tithes, the following are the only observations made in the Report:—

“The ecclesiastical courts possess a jurisdiction in all cases of tithes, but the courts of common law, *propter defectum triationis*, now restrain them from trying any case of modus or prescription, if either of the parties think fit to apply for a prohibition.

“Suits for tithes in the ecclesiastical courts have been gradually diminishing in number, and though they do occasionally occur, on the whole they are not numerous.”

The Commissioners neither propose that the jurisdiction, in cases of tithe, should be taken away, nor that any alterations should be made so as to preclude the objections which now exist to that jurisdiction. They have not ventured to recommend the adoption of trial by jury, as in other cases, which would supply the defective trial, on account of which a prohibition may now be granted. They probably felt the impropriety of rendering the spiritual courts judges, as it were, in their own cause, and were content to leave the question in the imperfect state in which they found it. To us it seems peculiarly desirable that the jurisdiction over all questions of tithe should be transferred entirely to the temporal courts. It is in fact altogether a matter of a temporal nature, to be decided like every other similar right of property, according to the rules of the municipal law, and not in any degree by the law spiritual.

The system of church rates, another matter of a “mixed description,” is one which certainly requires much amendment. The changes proposed by the Commissioners appear to transfer (very properly) the whole jurisdiction over these payments to the temporal courts. In case of no rate, or of an insufficient one being made, they propose that the Court of Quarter Sessions shall have power to make or to increase it, and that any parishioner should have a right of appeal to the same tribunal. On the same principle they recommend that the payment of church rates should be enforced in the same mode and by the same remedies as are now

applicable by law to poor rates. Why tithes should be partly under the control of the spiritual courts and partly of the temporal courts, while church rates are to be wholly within the jurisdiction of the latter, is not very easy to be accounted for.

How far the provision that the Quarter Sessions shall have power to make a church rate, where the inhabitants in vestry assembled have thought it unnecessary, is a proposition which, before it is acted upon, will certainly require farther consideration.

With regard to the question of the title of churchwardens, which the Ecclesiastical Court has no authority to determine, the report recommends that this power should be conferred on the Quarter Sessions, with liberty to send a case to the Court of King's Bench in matters of difficulty.

All suits respecting church seats are properly within the jurisdiction of the spiritual court; but where a party claims a pew by *prescription*, a prohibition will be granted, in order that the question may be tried by a jury. The Commissioners think it desirable that, in future, no faculties should be granted for annexing a pew to a messuage; and that all claims, where no faculty or legal prescription exists, should be finally extinguished. They recommend that a commission should issue, in each diocese, to ascertain the seats held by faculty or prescription, and that this point being settled, the right of placing the parishioners will remain with the churchwardens, from whose determination they suggest an appeal to the archdeacon. In the cases of pews annexed to houses by faculty or prescription, the courts of common law will retain their jurisdiction.

We should have been inclined to go farther than the Commissioners have done in these alterations, and have subjected all questions whatever relating to pews to spiritual cognizance. If it be not possible to do away with the annexation of particular pews to particular houses, and if a question of prescription should therefore arise, let the spiritual court have the power of summoning a jury for the trial of it, in the manner suggested in the Report with regard to the testamentary causes. All questions with respect to pews are purely spiritual, embracing merely the right to enjoy the advantages of divine worship—of the mode and time of which the church is herself the most competent judge.

The third class of matters of ecclesiastical jurisdiction are those which affect church discipline, and offences of a spiritual kind. These again are subdivided into offences committed by the clergy, and those committed by laymen. That the discipline and correction of the clergy should remain matter of spiritual cognizance, few will deny; and the Commissioners have recommended a new course of proceeding in such cases. As to laymen, they advise the entire abolition of the spiritual jurisdiction, and the transfer of it to the

temporal courts. It is indeed surprising that the abuses, which have not unfrequently occurred from the exercise of this jurisdiction in many of the country spiritual courts, should have been suffered to exist to this day. There are few persons who have had any experience in the practice of the law, who cannot recal some case of oppression, or some flagrant instance of a malicious prosecution, under the power exercised by the ecclesiastical courts in matters of defamation. This public nuisance, it is clear, must be abated, and the Commissioners wisely recommend the abolition of it, as well as of all proceedings "for brawling and smiting," for incest, adultery, and fornication.

In these recommendations we heartily concur; but we cannot understand upon what principle the spiritual courts are to be exonerated from the trial of criminal cases, and yet to retain their jurisdiction over testamentary and matrimonial causes. The absence of a jury can scarcely be alleged as a reason, for the Commissioners have shown that the trial by jury may be added to the constitution of the ecclesiastical courts. The fact is, that criminal trials are short unprofitable things, while some of the longest and most expensive proceedings which can arise in the law are those in testamentary and matrimonial cases. In the same way there is no wish to retain petty questions about church rates, which may go to the Quarter Sessions, but for suits respecting the distribution of intestate estates, "*the Prerogative Court of Canterbury has a sufficient establishment of able and competent officers.*"

We now come to the consideration of the manner in which the jurisdiction of the ecclesiastical courts is at present exercised, and the change therein proposed by the Commissioners.

The first and most striking feature of the system is the prodigious number of separate courts throughout the country. These are, the various provincial courts of the two archbishops, the diocesan courts of the bishops, the archdeacons' courts, and the *peculiars* belonging to archbishops, bishops, deans, deans and chapters, archdeacons, prebendaries, canons, rectors, and vicars! These *peculiars*, with certain manorial courts, actually amount in number to nearly three hundred. They extend over tracts of country of various size—sometimes embracing places lying apart from one another, and their powers are of a varied and capricious character. Their jurisdiction in testamentary cases is most injurious, and it is scarcely less noxious in relation to other matters. A will proved in one of these courts is deposited in a registry, where it is lost or destroyed, and is decided upon by a judge utterly incompetent to the office. "It would be easy," say the Commissioners, "to set forth many other reasons inducing us to suggest the entire abolition of these jurisdictions; but as we are

not aware of any one benefit which would result from their continuance, we conceive that the circumstances already stated will suffice. We therefore propose, that the *peculiar* jurisdiction should be abolished, and that every place should be subjected, in all respects, to the bishop within the limits of whose diocese it happens to be locally situate, as if no such peculiar jurisdiction had ever existed."

On the subject of the diocesan courts the Commissioners say:—

"The diocesan courts are exempt from some of the objections which may be urged against the peculiar jurisdictions; but there are many reasons derived from the state of these courts in the present times, and the importance of some parts of the business arising there, which induce us to think that the transfer to the provincial courts of the jurisdiction hitherto exercised by them, would be a great improvement to the administration of ecclesiastical law

"In the course of our inquiry we became convinced of the impracticability of having judges duly qualified, together with a competent bar and skilful practitioners, to administer, in the diocesan courts, the testamentary and matrimonial laws, which involve matters of such very high importance to the parties litigant, and to the public. The returns which have been obtained from the diocesan registers show that the annual amount of business, and the emoluments of the judges and other officers, and of the practitioners in these courts, make it impossible, in the greater number of dioceses, that efficient courts can be maintained. This is a defect which, if it cannot be removed, outweighs all the advantages that may sometimes attend the exercise of episcopal jurisdiction within the local limits of the respective dioceses. From these considerations it appeared to us to be advisable to recommend the transfer of the whole *contentious* jurisdiction to the provincial courts; a measure which became still more apparent to us when we found it expedient to alter the mode of taking evidence in the ecclesiastical courts."

Similar considerations, say the Commissioners, apply to the archidiaconal courts, and they propose also to abolish the testamentary jurisdiction of the manorial courts.

Upon these proposed changes it may be remarked, that while they are in themselves highly desirable, as abolishing a number of petty and ill-conducted tribunals, which led to abuse rather than to redress, they furnish at the same time an argument against the retention of the testamentary and matrimonial jurisdiction of the provincial courts. Why should the parties be compelled to attend with their witnesses in London, or York, when if the case had been matter of temporal jurisdiction, it might have been tried in the county where the witnesses reside? Take the case of Mr. Farquhar's will, where one hundred and twenty-five witnesses were examined. What an enormous expence would be incurred by the necessity of these persons attending in London. If, indeed, the

provincial courts are to be invested with this jurisdiction, some provision should be made for the trial of cases in the country.

The Commissioners do not state upon what principle the existence of the two provincial jurisdictions is to be suffered; and, indeed, they almost recommend the abolition of that of York.

“ This report has been drawn up on the supposition that the *provincial court of York* is to be retained; but it is proper to say, that a doubt has presented itself to our minds, whether the arrangement which we have proposed for the improved administration of the ecclesiastical laws would not be rendered more complete and effectual if the contentious and testamentary jurisdiction now exercised by the courts in the province of York were transferred to the metropolitan court of Canterbury. We do not, however, venture to offer a specific recommendation on this head.”

The Archbishop of York is not included in this commission, and it is, doubtless, out of delicacy to that prelate that the commissioners have not ventured to recommend an alteration of which they evidently approve.

In addition to the various alterations suggested in the Report with regard to the matters proper to be confided to the jurisdiction of the spiritual courts, and to the abolition of the inferior tribunals, various other changes are proposed to facilitate the progress, and amend the proceedings of suits. The abolition of the inferior courts will prevent many abuses which formerly arose out of the appellate system. No less than five appeals may at present be resorted to, where a cause is commenced in the archidiaconal court.

The introduction of *viva voce* evidence is recommended, as we have already stated, both in testamentary and other cases. This was necessary, in order to give a colour of claim to the cognizance of all testamentary cases. But surely it is singular, that when the courts of common law possess a machinery fully competent to such inquiries, the whole constitution of the spiritual courts should be changed, in order to fit them for it. In the same manner the introduction of the trial by jury is suggested, and thus the proceedings of the ecclesiastical courts are to be rendered as analogous as possible to those of the common law tribunals.

Amongst the most important recommendations of the Commissioners is one in favour of establishing a General Registry of Wills :—

“ The propriety of establishing a General Registry for all Wills and Administrations has not escaped our attention. We are aware of the convenience and advantages of having one place of perfect security, and easy access, in the metropolis, where may be found all testamentary instruments, sanctioned by probate, and where *the utmost facility* may be afforded *for inspection*, and obtaining copies at a reasonable expence.

“Such a registry would undoubtedly afford a more perfect security, and save much trouble in the searches now necessary to be made for wills in divers places, and would, in many instances, diminish the expence attendant on such searches. One universal registry for wills cannot, however, be established, without an entire abolition of the provincial court of York, and compelling that court to transmit the originals, keeping copies only.”*

Upon this part of the Report we must in the first place remark, that it in fact conveys the approbation of the learned persons from whom it proceeds to the merits of “Registration” in general, and that it is also strongly in favour of the metropolitan scheme of registration. If it be in fact desirable that a registry of wills should exist, it is equally to be desired that the power of ascertaining the disposition of property by deed should be given. Why should “the utmost facility of inspecting and obtaining copies” of *wills* be provided for, and yet no power whatever be conferred of acquiring a knowledge of the contents of deeds? The creditor of a man who has conveyed away his property by deed may have an equal interest in inquiring into the transfer, with a devisee who is to acquire property under a will.

Why the registration of wills, both of real and personal property, should not be included in the general scheme of registration proposed by the Real Property Commissioners, it is not very easy to see. Not only would a vast saving of expence be effected by such an arrangement, but all the objects which registration is intended to serve, would be much better answered. So long indeed as the spiritual courts are permitted to retain their jurisdiction over testamentary documents, an objection may be raised to such a project; but if the cognizance of wills of every kind should be transferred to the common law courts (the fittest tribunals to adjudicate upon them), no difficulty whatever would be found in subjecting them to the same system of registration which would prevail with regard to deeds.

We shall not attempt to state in detail the various other recommendations which the Report contains, with regard to the improvement of the practice of the spiritual courts, and upon certain miscellaneous questions which have come within the scope of the Commissioners’ inquiry; it is sufficient to say, that these suggestions appear to be for the most part judicious, and well calculated to prevent abuses.

* Mr. Bickersteth, in his evidence before the select committee of the House of Commons on the subject of registration, has stated the benefits to be derived from a Metropolitan Registry of Wills; and Mr. Campbell has borne his testimony to the necessity of a General Registry of Wills of Lands, without which the registration of *deeds* would be a very imperfect measure.

We regard this Report as a most encouraging proof that the spirit of amendment is universally diffused throughout the nation. Even the Archbishop of Canterbury and Lord Wyndford found it impossible any longer *stare super antiquas vias*, where these roads have become *foundrous* and impassable. Some alteration it was obvious must be made; and the heads of the church and the sages of the law have submitted to point out the path of improvement. Much credit is due to them for what they have suggested, and much benefit will be derived from carrying many of these suggestions into effect. At the same time, it is necessary to watch with caution the recommendations of a body of men, who, whatever may be the extent of their learning and the purity of their intentions, cannot fail, from education, from habit, and from interest, sensibly to feel that "fear of change," which in our days "perplexes" prelates and judges as well as "monarchs."

ART. VI.—ON PROPERTY IN ANIMALS,

MORE ESPECIALLY ON THE TITLE "*Propter Privilegium*," IN GAME.

Human happiness is the great, and indeed the only, ultimate object of the science of law, as well as morals. Its practical tendency to promote that object must, consequently, in both sciences, be the test for trying the propriety of whatever rule professes to be more than a mere arbitrary provision. In technical discussions, this proposition is naturally and necessarily overlooked: but it is not the less assumed, by all reasonable persons, as the last and conclusive consideration, wherever it can be applied. This is no less the case in our abstract reasonings concerning the necessity of the institution of private property at all, than in our comparison between the particular terms or arrangements prevalent with regard to its respective branches in different societies.

The several titles by which property, whether in land or moveables, can be rationally or legally acquired, have been settled long ago. No circumstances are likely to occur which can lead to or justify any important change in the principal divisions; but, where the wants and commerce of society introduce modifications of old interests, or new methods of communication—as in bills of exchange, for instance, and negotiable instruments—it is clear that the strictness of the previous law must be loosened, and its remedies varied and extended, so far as to keep up with and protect the improvements in the intercourse of mankind. Suppose an admirable invention, like the printing press, to come in aid of the demands of a community, which has grown into wealth and

civilisation, so that a new property rises up, as that in ideas, under the name of copyright. From that moment, neither the justice of preserving to genius the reward of its own creations, nor the duty of encouraging literature out of its own funds, can be allowed to depend on the fact, whether a precedent in restraint of plagiarists and of amanuenses may chance to be disinterred out of the year books.

The necessity of a constant self-adaptation of this sort is so evident that it is implied in all our notions of national progress and human improvements. Thus, whatever might have been the former law of England on the subject of animals *feræ naturæ*, the law must follow the actual condition of society. The title *ratione soli* commences when a claim to them can no longer be properly left outstanding, as a right of occupancy on the part of all mankind, or be vested as a privilege in other hands than those of the proprietors of the soil. Occasional hardship, or accidental inconvenience, may here and there, in practice, attend the application of the rule by which this sort of property is so fixed; but they are not worth noticing in comparison with the advantages. This species of qualified property will form, on one hand, as close an approximation to the absolute property which the owner of tame animals possesses, as the nature of the case admits; whilst, on the other (since the ownership is not complete), the liability arising out of a temporary and local interest must be only temporary and local also.

The only classification of animals with which the law has, as a science, any concern, is that into tame and wild. This distinction will furnish whatever considerations are material towards ascertaining and characterising the several legal consequences which are properly connected with the subject. For more questions than lawyers are ready usually to admit, had better be left, in this and other cases, as matter of fact for a jury, than be anticipated in the dark, under the notion of completing a system in the text books. In tame animals, the property, when once vested, may be preserved by *constructive* possession; in wild, by *actual* only—that is, either by manual custody, or, if they remain at liberty, by a legal and territorial possession, commensurate with and derivative from their commorancy on the soil. This test is a claim analogous to that on the allegiance of aliens.

In respect of tame animals, there ought to be little difficulty in settling, 1, the different titles, by which a property in them can be acquired; 2, the nature of the right which is thus constituted; 3, the obligations towards others arising out of and correlative to this right; 4, the circumstances by which the right ought to be extinguished or transferred.

The English law might be more reasonable and explicit under

the two last divisions. It seems an absurd subtlety to designate the property which may be had in tame animals by the style of "qualified property," owing to the remote possibility of their returning into the state of wildness from which the original stock of our most domestic creatures, as well as man himself, was, probably, originally reclaimed. Moreover, there should exist a perfect reciprocity between the right and the obligation. As long as a right of property exists, which the law will compel others to respect in behalf of the reputed owner, he ought to be understood at once—without entering into the question of notice or a *scienter*—to come under a corresponding liability. An absolute owner should be fixed with the entire consequences of his title, and obliged to take the burden along with the advantage. A master, it is true, is answerable for the acts of his servant only within certain limits. The principle of the restriction, it is evident, can have no application to animals which belong to him. If his bull tosses me, or his cattle trespass on my corn, or his dog worries my sheep, or his cat pilfers out of my larder, an injury has been done, of which he or I must bear the loss: and there can be no question, surely, either in morals or in policy, which of the two it ought to be. The injustice of the English rule is carried to its height in the licence granted by it to what are called tame pigeons. They are now frequently, in point of fact, as great a nuisance as in the age when (with an exception in favour of the lord's and parson's dovecote) they were a nuisance in point of law. But our actual law refuses to give the farmer, on whose corn they are daily feeding, a remedy for the damage they commit: at the same time that it will not allow him to take the remedy into his own hands. On the last point, in an extreme case or two, some metaphysical embarrassment might occur in settling the technical definition; and it is just possible that some practical nicety now and then might perplex the determining as a fact, by what circumstances, independent of the will of the owner, this species of property should be divested. When tame animals have strayed, or have been stolen, and afterwards turned loose, it would be an unreasonable strictness, as against the owner, to hold that the mere want of possession, coupled with an absence of the *animus revertendi*, amounted to a legal deprivation. A slave is considered in the light of an animal only. The intention of returning is more strongly negatived, in the instance of a runaway slave, than can possibly be the case with brute creatures. But neither does the civil law, nor that of any slave community, allow this fact to put an end to the master's right: it makes no difference in this respect, that the abomination of slavery is stamped with an anomaly peculiarly its own. The question of property in a human being may not rest, it is true, solely between third parties: under certain circumstances, the slave

may set up a case on his own behalf. The *Papers by Command*, just published, contain (p. 83) a discussion between Lord Goderich and the planters on the nature of the evidence required on this very point. It arises out of the amendments introduced into the New Slave Code, under the late order in council of November 2, 1831. In all doubtful cases, where the right of property in tame animals should be asserted, important aid towards determining it might be obtained from a consideration of the opposite question; namely, whether the party who is now claiming an animal as his property, could have been held answerable, as defendant, in the event of mischief having been committed by it?

The extravagance of declaring, in black letter, what animals are of too base a nature, or of too low a value, to support an indictment or an action, is as indefensible an example of judicial interference with a simple matter of fact, as the attempt to lay down a *maximum* beyond which the quantum of damages in certain cases shall not pass. In this spirit, Baron Legge is reported to have capriciously refused to try an action on the Oxford circuit, for shooting a monkey. Notwithstanding *de minimis non curat lex*, little people and their humble interests have a right to be heard. In the *Traité de Legislation* there is a very just rebuke on the ridicule which some French journalists had sought to throw on a court of justice for taking a canary bird under its protection. Some unfortunate person confined in Cold Bath-fields prison, complained (we remember) of his bird having been taken from him. Subject to prison rules, such a case might be safely trusted to the discretion of a jury. Extreme examples appear ridiculous from their fancifulness and improbability; but we see no reason why satisfaction should not have been required from the governor of the Bastille, supposing him to have destroyed the spider, which the Count de Lauzun is said to have domesticated into a companion. Amusement* is as necessary to man as food and raiment; and it is the business of the law not to settle beforehand the different elements of human happiness, for every individual, and appraise them according to a scale and average of its own; but to leave individuals to make themselves happy in their own way, and to protect them in the pleasures of their choice.

Wild animals is a wide term, and comprehends animals of very different descriptions. There are those properly considered so—as beasts brought for a show from the desert into the heart of a metropolis—dangerous to every body but their keeper, and perhaps to him. The inferior vermin, which civilisation outlaws, but fails to exterminate, are entitled to rank next. Of other creatures, some are left in a state of nature from the necessity of

* Vide Lord Eldon's judgment in *Astley v. Weldon*, 2 Bos. and Pul. 346.

the case : for instance, birds of passage, and the butterflies of the season ; others, because from the vagrancy and shyness of their habits, or from their personal insignificance, the attempt to domesticate them would be more trouble than the thing is worth. But of a great part of the animals which the law regards as *feræ naturæ*, the wildness is comparative only, and rests more in convention and fiction of law, than in fact.

Pheasants fed regularly under the window, or by the side of the plantation, or rabbits whose burrow is in the hedge bottom, are as stationary as barn-door fowls. It is the same with rooks, whose hereditary nests are part of the freehold as much as the elms in which they hang. Partridges wander but a little farther : these, in their *preserves*, as well as the fox, for whom his gorse cover is so lavishly provided, and so jealously watched, are left at large, it is true, but their wildness and independence of human superintendence and support are nominal only. At the year's end they owe their existence to the concern professedly bestowed upon them, as much as the sheep in the pasture. On comparing the condition of the blackbird, taken from the nest, put into a cage against the wall, and fed by hand, with that of its brother who was left behind, and permitted to range over the garden as its aviary, and to pay itself out of the cherry-tree for its song, the distinction between a right to property in the two cases is not so much in the circumstances out of which the right can be respectively derived, as in the evidence by the means of which alone a remedy can be applied in case the right is violated. All the presumptions are admitted. They constitute a substantial title to the creatures falling under this division of domiciled *feræ naturæ*, whilst on the ground ; but the effect of the previous domicile cannot be carried farther : the chain of proof breaks off. Land, when it migrates from one quarter to another, by such operations that it cannot be specified, transfers a title to it to the proprietor with whom it settles. Animals so migrating must do the same. Possession, always favoured, under these circumstances becomes a necessary title. The former owner, in such a case, is expected to concede a portion of what would otherwise be his moral right, in consequence of the impossibility of making out with sufficient precision the evidence to support it. The necessity of this limitation is still more evident, when the relative situation of strangers in respect of such a claim is considered. The particular hare or fox which has done the mischief cannot be identified ; and the rights of ownership can be insisted upon against the public in no instance and to no extent, which does not allow of establishing and enforcing its consequent liabilities.

Whenever the law concerning wild animals is once established on the just principle of having a proper regard to the particular

period of society, it will lie in smaller compass and be almost simpler in execution than the law concerning tame. The dilemma about the base nature and insignificant value of certain creatures will occur here also. It can only be rationally disposed of, in both instances, in the same manner; that is, by treating it as a question of fact for a jury. The passion of modern Europe for field sports, and the supposed * necessities of the dinner table, induced the feudal lords, in our early customs, and the English legislature, by more recent statutes, to select some favourites, and to confer on them a special importance and protection under the character of game. The existence of any such distinction between one wild animal and another, and the principle on which this selection will vary from age to age, and from country to country, is of course entirely arbitrary. The hawk, the heron, and the bustard, were once what the pointer and the pheasant are at the present day.

The three heads under which a title may be set up to animals not domesticated, are the title *ratione soli*, occupancy, and privilege. The first is the title of a civilised society; it supposes for its existence the appropriation, and for its probable exercise, the cultivation of the soil. The second is the uncivilised and roving licence of a community where neither has taken place, or at least where agriculture, inclosures, and privacy, are in small esteem. The last is either the royal prerogative of a period which sees in the world only one master to be amused, and millions of slaves to labour for his amusement; or the feudal insolence of slowly civilising institutions, which may have displaced that one, but have put only a caste of village tyrants in his room.

Fortunately, it is not necessary, at the present moment, to enter into any elaborate proof that the property, *ratione soli*, in that class of animals, *feræ naturæ*, to which sufficient value is attached to signalize them as game, &c., is adapted to the existing stage which English civilisation has attained. It is equally unnecessary to show that, in point of fact, this title has always been the principal and paramount test of right applied to subjects of this description by the English law. Both these points have been lately and sufficiently dwelt upon elsewhere. The question, however, has been so successfully perplexed, and rendered so painfully important by the mismanagement and misunderstanding of a century and a half, that the advocates of the other titles seem not fully aware of the inconsistency of insisting—if not upon an exclusive, yet—upon a concurrent right. In this instance, the

* The necessity, which is now a caprice, was originally a necessity; or at least during the months of salt meat, something very like it. Accordingly, the church of Wyndham obtained from the Earl of Arundel, about 1180, the title of all the game taken in his park.

inconsistency arises entirely out of the prejudices and misstatements of latter times. There are many persons at present who love precedents more than reasons; and still more, we hope, who are gratified on finding them coincide. It is desirable, for the sake of both classes, in a case where precedent is ranged on the same side with reason, that a comparatively modern innovation should not continue liable to be mistaken for the principle and practice of the founders of our law: the experiment and innovation have been, in truth, all the other way. The experiment and innovation were in the laws which disqualified the farmer and small proprietor, and which prohibited the sale of game.

An argument, which proves directly that the title to game, *ratione soli*, was that which was always recognized by the law of England, of necessity disproves indirectly all other titles. They may exist, indeed, as exceptions in certain cases, but not in contradiction: nevertheless, occupancy and privilege have still their respective partisans. As little authority, however, is to be found in the ancient law of England, as in the nature of the case for the pretensions of either party. A few words will dispose of the champions of occupancy; who, as far as they or their advocates concern themselves with the law, have only a few careless expressions and a single anomaly to rely on. The remaining observations will be addressed to those who, misled by the assertion of Blackstone, or mystified under some other general and vague impression, fancied they saw in the privilege of game laws the last flower of prerogative in the crown, or the last shadow of reflected royalty communicated to themselves.

Occupancy is the just and natural title of a barbarous country; but it must be gradually superseded, and at last extinguished, by the progressive advances of civilisation. This is so evident, that the latitudinarian language of Justinian's Institutes can only be accounted for on the supposition that the rule of early Rome was transcribed without sufficient consideration: its adoption has tended to confuse the legislation on this subject of all governments dependant upon Roman law. In the condition of population and cultivation which England has attained, the theory which represents game as one of the things left in common, can lead to nothing but delusion; since such a right can, under the circumstances, exist in name only, but must be contradicted by the fact. The landowner would either cease to raise and support a thing, the enjoyment of which he could no longer secure, or, by the form of an action of trespass on his land, he would still indirectly continue in the exclusive enjoyment of that which the law refused expressly to assign to him. In the latter event, the necessity of this circuitry of proceeding is a fraud and a hardship on all parties. The other supposition leads to, and is synonymous with, the pre-

mature extermination of all game; in other words, a subject which, when properly regulated, might have, in some degree, administered to the advantage of all, will no longer administer to the advantage of any. Game is only a wilder poultry. Whether it is kept cheap or dear, the landowner at whose charge it is maintained, undoubtedly conceives that he gets, or is to get, an equivalent for its keep. He surely is entitled to pursue this course if he pleases, subject to the question of public policy. But for this purpose he must be protected in this sort of interest, as property, whilst it continues with him.

The author of the "Doctor and Student," first published in 1518, appears to have been quite as much of a canonist and civilian as a common lawyer. His authority is the latest and the strongest on behalf of occupancy; but his language is too short and positive in its generality, and the distinction which he makes concerning the eggs and the bird hatched out of the egg, in admitting half the case, admits the principle which must drag after it the rest. "By the laws of the realm, no property may be of birds, wild beasts of forest and warren, and such other, in any person unless they be tame. Nevertheless, the eggs of hawks, herons, or such other, as build on the ground of any person, be adjudged by the said laws to belong to him that owneth the ground." We answer, no account has come down to us of that period of English history when private property in land was not already established universally throughout the realm. But, by a maxim recognized judicially as early as the reign of Edward the Third, the title by occupancy can arise only where that *ratione soli* happens to fail. Consequently, it is doubtful whether at any time; but certainly at no time since the fourteenth century, has room any where in England been left (except by some accident or quibble) for the title by occupancy to such animals as are *feræ naturæ*, by possibility to commence. Unoccupied land which belonged to nobody belongs to the crown, as the great reversioner; and the game accompanies it. While great part of England lay as yet open in wood and waste, the property in the waste was nevertheless vested in the lord as much as that within his park palings; accordingly, the property in the game thereon attached by the same title. To recognize the title of occupancy in a case where it must commence by an actionable trespass, is a contradiction into which the Roman and French lawyers fell; but from which the leading rule of the English law on this subject is free. Judicial decision had introduced one incredible exception in behalf of a double trespasser, who raised game on the land of A, and killed it on the land of B. It is an exception removed in the late bill. So far from a wrong being able to *originate* a right, it is only by some singular accident that an actually existing right can be ever left to be so enforced.

A remedy may, indeed, be lost by negligence, &c.; but an original right without an original remedy is an absurdity. It is a maxim, that when the law gives a right it gives also the means of exercising it. *Quando lex aliquid concedit, concedere videtur et id, per quod devenitur ad illud.*

There is a stage preceding the first movement towards civilisation in a country, when occupancy is the reasonable title. Even thus much, however, cannot be said in behalf of prerogative or privilege: before occupancy can cease to be the just origin of property in game, the title *ratione soli* must have begun. There is no intermediate space on which the pretensions of a caste, by way of honorary distinction, can fairly stand; whatever, therefore, they seize on, they seize on in this respect, as in most others, by accident and ignorance. They begin by brutal force, and retain by the prejudice of an arbitrary custom. The right to game may, indeed, be reserved* as a servitude or easement. This is so far distinct from privilege in its origin, that it starts on the footing of property; but beyond a certain point it ultimately resembles privilege in its worst consequences, by separating permanently the soil and the amusement. It cannot be prohibited as a temporary arrangement between party and party; but, as a lasting conveyance or obligation, it ought to be discouraged, on account of its pernicious effect on cultivation, and from the dissatisfaction which, in course of time, it must occasion.

It would be folly to expect that poachers and their advocates should recognize the justice of any argument which displaces their favourite title of occupancy in animals not domesticated, by the title *ratione soli*. They will deny either that this effect necessarily belongs to the transit from one state of society to another, or, at least, that the period of transition has yet arrived among ourselves. Street beggars are just as likely to profit by lectures upon mendicity; or pickpockets and pirates to forego the sophisms by which passion of every sort throws a mist over the real character of its crimes. We have, however, much better hopes that the country gentlemen may be converted to our views. The unwilling assent or indignant submission with which the principle of the late Game Bill has been accepted by a considerable proportion of the principal landed proprietors rest on no such reasonable ground of objection. They have every thing to gain, as a body, by taking their interest in game on the plain and popular title of an interest

* This sort of reservation was too extensively permitted and acted upon by keen sportsmen in England and Scotland on sale of their estates. The Roman law, notwithstanding its general licence to fishing and hunting everywhere indifferently, supported a similar arrangement, if not as a servitude, as an agreement. A stipulation to this effect concerning the tunny fishery is mentioned as a valid condition, imposed by Venditor fundi Geroniani, &c. l. 13. ff. comm. præd.

concurrent with, and derived from, their proprietorship of the land. They have every thing to lose by standing out upon a claim so vague, unreasonable, and odious, that nobody could tell where to look for an argument by which it was to be defended.

This prejudice upon their part has nothing to plead in its behalf but a feeling or opinion, which, although comparatively of modern date and quite erroneous, has nevertheless become traditional with the English gentry. They have been taught to believe that under the feudal system, as received in England, game belonged originally to the king, as a branch of the royal prerogative; and that the right was afterwards partially granted out from time to time to the lords of certain franchises. In addition to this instruction, they have persuaded themselves (for we cannot, in this point, find any teacher) that a similar or equivalent privilege became in some way or other, in course of time, extended to lords of manors generally. This hypothesis being assumed, the qualification act of Charles II. appears in an entirely new point of view. It is admitted that persons not possessing a certain landed income are by this act prohibited from sporting; but this exclusion, so far from being allowed to be an innovation in restraint of the former right, is represented to be merely the limit at which the enabling operation of the statute stopped. On this supposition the 22 Charles II. disqualifies nobody; it qualifies some who were not qualified before, and it subjects those whom it leaves still unqualified to certain statutory penalties. Mr. Justice Blackstone's construction of this and similar statutes is even still more narrow and extraordinary. In his opinion they were misnamed qualification acts; they ought to have been called exemption acts: for they qualified nobody, but merely exempted people of the fortune and condition therein specified from the new penalties, which it was the object of the acts to impose upon inferior persons. Assuming the previous existence of an exclusive prerogative over game in the crown, he denied that any portion of it was parted with under these statutes in favour of any person whatsoever. The penalties of the act could not be enforced against a sportsman who was qualified under its provisions; but such a person remained just as liable to be called on by the attorney-general for an encroachment on the prerogative royal as any pauper poacher in the parish. The delusion which is common to both these representations of the statute of Charles II. depends on the assumption that any prerogative of the sort was ever vested in the crown; consequently, that any such privilege as is supposed ever was, or ever could have been, transferred to others. The proof to the contrary on this point is so conclusive, that it ought to satisfy the most feudal country gentleman in existence. In that case, it is not too much to expect that, the grounds of their objection being removed, the public may look

forward to their cordial co-operation in the beneficial execution of the law.

The late Lord Ellenborough said that Blackstone made himself a lawyer by writing the Commentaries; these Commentaries, however, furnish ample proof that the constitutional law which he acquired in this way was of a very unsatisfactory sort. This theory of a prerogative in game stands on the authority of Blackstone alone: he appears to have formed it out of mere aversion to the modern game laws, and for the sake of the sneer which he was enabled to found on it against qualified sportsmen. No lawyer ever invented a more singular, superficial, and wanton fallacy. It has not the excuse of being an error into which an author falls from carelessness, or from losing his way in the labyrinth of multifarious and contradictory learning. On the contrary, it is a novelty deliberately started, and prided in as such. If this example could be taken as a specimen of our *responsa prudentum*, we ought to be very thankful that the ingenuity of professional text writers has not been readily incorporated into the substance of English law.

The judicial arguments upon general warrants and upon impressment, and the parliamentary debates on embargo and on the Alien Act, rubbed up at the time a brief incidental interest concerning the limits of prerogative. Otherwise, the discretion of modern administrations has allowed prerogative learning, which made so honourable a part of the constitutional studies of our popular lawyers under the Stuarts, to become nearly obsolete. Had not this been the case, it would have been impossible that the doctrine broached by Blackstone should have been admitted into his work at all, or, at least, that universal reprobation of so untenable a statement should have allowed a trace of it to remain in discredit of his authority beyond the first edition. Professor Christian has pointed out its irreconcilableness with the purlieu-decisions, and with other passages of our earlier law; but, in reality, it has not one of the characters which a valid prerogative ought to have.

In the absence of every thing which a lawyer would call authority, we have looked in vain for even those scraps of tradition which an historical gossip of the order of Horace Walpole might have thought it not beneath him to pick up. There is not a syllable approaching to evidence admissible in a court of justice to show that this power was ever exercised by the crown in point of fact; and there is not a whisper to lead to a suspicion that it was ever claimed as a legal right. Judicial precedents, therefore, are out of the question. Yet, according to Lord Camden, mere precedents do not, in a case of this sort, acquire judicial sanction, if they pass *sub silentio*, and without the attention of the court having been properly addressed to them upon objection taken.

This, however, is not all: it will be seen that there is an express judicial declaration to the contrary, made incidentally, indeed, but by all the judges (11 Coke's Reports, 88), on a most interesting occasion,—in an age, too, only a little less famous for its arbitrary tenets than for its legal learning. Lord Mansfield also delivered from the bench the same opinion at a much later period. But one single observation is conclusive: acts of parliament are inconsistent with a simultaneous prerogative to the same effect. Every act of parliament, therefore, which has been ever passed, in partial restraint of the common law right of the landowner over game, is a legislative decision against the possibility that an independent authority of the same description can be vested in the crown.

On examining closely Blackstone's hypothesis, it will be found to rest upon assumption only; on an improved and improveable supposition *à priori*. The argumentative analogies and inferences by which he afterwards seeks to reason up to it, are not in themselves sufficiently precise and logical to make out the deduction. "Dialectic deduceableness" is, however, a strange quality to attribute to this part of our law. The English constitution is not constructed on the rules and principles of strict logic. Analogies and refinements are altogether inapplicable in cases of prescription: usage here is every thing; and, most especially, in cases of prescriptive prerogative, is it indispensable that the precedent relied upon should be identically the same. The reasoning necessary to get at a prerogative in game is a hundred times looser than that advanced in support of the dispensing power. But what is said as to that? "If such a prerogative were in the crown by prescription (as it ought to be if it were a legal prerogative, 12 Hen. VII. 19; Plowd. 319, 322), it ought, then, to be confined and limited to such cases wherein it had been *anciently and frequently* exercised; and there ought to be no extension of cases where they are depending upon a prescription, nor is there any arguing *à paritate rationis* in such cases, which have their force merely from ancient and constant usage: it is a rule at common law, *ubi eadem est ratio, ibi idem jus*, but this rule does not hold in customs and prescriptions."

The laws of Canute and of the Saxons, as supposed to be extant, know nothing of any such pretension on the part of the sovereign; it was necessary, therefore, to take up a position on the Norman conquest. That event has long had the merit or demerit with certain antiquarians of being the supposed starting post of every thing arbitrary in our institutions. The peculiarity in the present instance is, that it does not make the conquest answerable for any injustice, the actual existence of which is recognized; but for an hypothetical injustice, which cannot be shown ever to have been exercised for a day at any possible period of English history.

Blackstone boldly asserts that the Norman conquest invested our new race of kings with the sole right of *taking* all animals *feræ naturæ*. This is a fact, however, of which it is admitted that there is no direct evidence whatever. The want of such evidence is an omission which it is impossible to supply from other sources, and by other means. Yet, whilst nothing can be clearer than this in point of law, Blackstone does not appear to be aware that there is any difficulty in the case. He passes on as if one method were as good as another, and a little ingenious reasoning equivalent to appropriate proof. Three considerations suggested themselves to him as the basis of this imagination: first, that goods which belong to nobody, *bona vacantia*, belong to the king; secondly, the dictum that the king, being the ultimate feudal proprietor of the soil, may enter on it universally for the purpose of obtaining possession; and thirdly, the argument that since the king could grant to his subjects, as a franchise, the exclusive right of *taking* game, he must have had the right to it originally inherent in himself.

We will proceed backwards. To begin with the last reason: it will be seen, when we come to look into the nature and examples of these franchises, that they were never understood to consist in the right to *take* game, but in the right to make *preserves* for its extraordinary protection. The connexion, therefore, between the premises and the conclusion is gone.

The second reason is grounded on the king's supposed dominion in the soil. It is true that the law, for the purposes of legal argument, distinguishes the *dominium directum* from the *dominium utile*, and pays the king the courtesy of clothing him with the former; but what then? The right of entry, supposing it to exist, is quite distinct from a right to the creatures on the soil, which, like the herbage, may be a part of the useful possessory right. But, farther, a right of entry on the part of the king by no means follows as a necessary consequence from his ultimate reversion. The law has, it is true, provided no means of trying the inviolability of an Englishman's freehold any more than that of his house; yet the Archbishop of Canterbury's version, on the Queen's trial, of the legal fiction, that "the king can do no wrong," is bad law, although it may be good Church of England doctrine. Lord Chatham has told us that an Englishman's house is a castle, which, though the winds of heaven may enter it, "the king cannot, the king dare not." We say the same of his plantations and his stubbles.

The only part of this novelty which has the semblance of an argument is that contained in the first proposition, in the maxim concerning vacant goods. The proposition, nevertheless, is false, when it is thus broadly stated. The king is, in the language of the law, proprietor—but only proprietor in trust for the public—

of those things which the Roman lawyers called *publici juris*, and which the public interest requires should be left in common for the use of all. But goods which are *nullius in bonis*, because they are altogether incapable of being absolute private property, or which, having been once private property, have by some accident ceased to be so, do not universally belong to the king. Walmsley, J., in the time of Elizabeth, is said to have incautiously observed, "that the Queen hath the royalty in such *things* whereof *none can have any property*." The proposition is certainly laid down in as general terms also by Bracton, but its universality is immediately contradicted by his illustrations. The celebrated Gascoigne appears to have narrowed the proposition to *goods* properly so called: he is reported to have said from the bench, in the eighth year of the reign of Henry the Fourth, that "all *goods* in England in which no man has *property* shall be adjudged to the king by his prerogative." The objection to both of these statements appears to be conclusive. A right to *all things nullius in bonis*, or to *all vacant goods*, is quite inconsistent with the contemporaneous existence of a legal schedule, in which were accurately inventoried (with the reasons for the same) the *special instances* where the law had given them to the king. These are all governed by some principle which distinguishes them from the common case, and which makes them the exceptions to a rule. This is the course pursued in every catalogue of the articles contained in the royal revenue: 1. Whale and sturgeon are *alone* called royal fish; they are expressly stated to be the property of the king *on account* of their superior excellence, and *in consideration* of his guarding the seas from pirates. 2. Waif also (or goods stolen and thrown away by the thief in flight) are said to be given to the king; but why? "As a *punishment* upon the owner for not himself pursuing the felon." 3. An estray (which a swan may be, but no other bird, "whence they are said to be royal fowl" *), wreck, and treasure trove, are the *only* remaining royal perquisites of this description. The original owner has a year and a day in the two first instances, and an indefinite time in the last, during which interval he may reclaim his property. Inconsiderable as these instances may look in modern eyes, there is a reason for the prerogative. It was evidently originally vested in the king in consequence of his being the most satisfactory public stakeholder for a contingent claimant. It is an absurdity to

* The prerogative over this excepted case of the feathered family is one which Noy would hardly think it worth his while to waken. Coke mentions that the king (it was apparently Edward III. in the thirtieth year of his reign) "granted to another all the *wild swans* betwixt London-bridge and Oxford." Suppose the grant to have been of all the *hares and partridges* between London and Oxford, would Blackstone have ventured to stand up in support of it in any court at Westminster?

suppose that the king was entitled at the same time to *all* and *some*; and that intelligible reasons should be so visibly assignable for the *some*, in case the royal prerogative was at once, without a word in explanation, to be extended beyond the reasons.

The above statement contains every title of the argument which Blackstone thought it worth his while to string together in support of his proposition. Before he went so far out of the way of probability for the sake of surprising his readers with this extraordinary opinion, he ought to have, at least, attempted the removal of palpable inconsistencies. It is in irreconcilable contradiction with the general title which he elsewhere, in two different places (1st vol. 295, 2d vol. 402), acknowledges to be in the first occupant to things in a state of nature, by the law of England. It is in equal contradiction with the particular title to game, which he admits (1st vol. 419) may arise under the character of property in certain circumstances, *ratione soli*. But Blackstone was also counsel in the copyright case. In an old argument upon the king's claim of a prerogative copy in the almanac (a composition which had no certain author), Pemberton had said, "Where no individual person can claim a property in a thing, the property vests in the king." In commenting upon this assertion (4th Burrow, 2347, 2402, *Miller v. Taylor*), Lord Mansfield and Aston, J., observe, "That to get at the ground of property, the argument was far-fetched and misapplied, for the consequence did not follow; because, in a case of this kind, *if there is no private property*, it would *not* belong to the king, but be *common*, like animals, *feræ naturæ*, or air, or water, or the like."

We are not aware that there is a trace in any English law book of this supposed prerogative right in game ever having been the subject of a judicial claim. Lord Mansfield's opinion appears by the last paragraph. The point had been brought incidentally in question in the case of monopolies, decided in the 44th of Elizabeth. This is the great precedent to which we referred above. The right had been assumed in argument by way of illustration only, and was applied in support of a patent for the monopoly of the manufacture of playing cards. Both instances were attempted to be grounded on the necessity of a royal superintendence over popular diversions, upon some such principle as might afterwards be connected with the Stuart Proclamations and Book of Sports. But instead of the reason or the fact receiving any encouragement from the judges, the contrary is expressly reported by Lord Coke (11 Coke's Reports, 88), to have been among the four common law reasons assigned by Popham, C. J., and *per totam curiam*, in that famous judgment. "It is true, that none can make a park, chase, or warren, without the king's licence; for that is, *quodammodo*, to appropriate those which are *feræ naturæ* and *nullius*

in bonis to himself, and to restrain them of their natural liberty, which he cannot do without the king's licence; but for hawking, hunting, &c., which are matters of pastime, pleasure, and recreation, *there needs no licence*; but every one may in his own land use them at his pleasure, *without any restraint to be made unless by parliament*; as appears in the statutes 11 H. 7, c. 17; 23 Eliz. c. 10; 3 Jas. c. 13." There can be no greater authority than this judicial declaration upon the law and the usage of the reign of Elizabeth. It was an age in which royalty and aristocracy were in undisturbed possession of all anterior pretensions. In this, as in every other instance of questionable prerogative, the fact, that whenever a restraint was sought to be imposed, it had been from the earliest times the custom, instead of issuing a royal proclamation, to go to parliament for statutory authority, is decisive against the claim.

This would be conclusive, although evidence of its frequent exercise (as in the case of general warrants) had swarmed in the office of the secretary of state. In the present case, however, there is as little precedent to this effect in fact as in law. So far from this imaginary pretension ever having been urged in a court of justice, it does not appear that it was ever even usurped in practice. Blackstone quotes, indeed, a passage from Matthew Paris, in which King John is said to have forbid fowling throughout the realm. "*Capturam avium interdixit per totam Angliam.*" Something like a similar narration occurs in John of Salisbury, concerning the usage of an earlier period, that of Henry the Second. "One would suppose," he says, "that birds of the air and fish of the sea were common to all, but they belong to the crown, and are claimed by the forest laws, wherever they fly. The bee-hives are turned from the flowery banks, and are hardly allowed their natural liberty." The confusion in which this latter agreeable writer thus mixes together all the nice distinctions of English law and jurisdiction on this subject cannot be exceeded. It is not unreasonable to infer a similar degree of ignorance or carelessness on the part of Matthew Paris, concerning the limits within which the arbitrary proclamation, even of King John, was most probably restrained. However, what does the authority amount to? The veriest ship-money judge would have been ashamed to bottom a prerogative on no other precedent, throughout the whole course of English history, than a solitary instance in a reign of violence, and that an instance vaguely related in the chronicle of a monk. The absurdity of referring to such a narrative, as legal authority, is past belief. John was at that moment (A. D. 1209), under a papal interdict, and more than usually outrageous. The very page in which this sporting prohibition is mentioned, as part of his Christmas amusements while at Bristol,

contains the account of two transactions, which might just as reasonably have been quoted in proof of the contemporary law. One was an order that the hedges of all the forests in England should be levelled, and the ditches filled up, in order that the surrounding country might be wasted by the beasts, *datis frugibus circumquaque bestiis ad devorandum*. The other was the execution, at the king's command, of three Oxford clerks, whose fellow-lodger had fled on a charge of accidental homicide; in consequence of which enormity three thousand clerks, masters, and scholars left that town for Cambridge and Reading.

All to whom the news is any consolation, may be assured that the ninth section of the late enactment maintains every genuine feudal regality as entire in the crown as ever. The rights of the kings of England over game, by way of personal enjoyment, depended altogether on the forest laws. These laws related to two points—the nature of the jurisdiction conferred by them, and the space within which that jurisdiction ranged. Previous to the *ordinatio forestæ* (33 Edward First), the *carta de foresta*, or forest charter, had been, in every successive reign, among the most prominent objects of national desire. Other grievances might be left to a clause in the great charter. Those arising under the forest system were so paramount, as to require a separate act of stipulation and redress. Accordingly, at Runnymede, in the 17th of John, this sylvan remonstrance appears alongside *Magna Carta*; they form together the only national records extant of that reign. They appear together again, as inseparable companions, and are jointly re-enacted in the 9th of Henry III. The oppression of the royal forests appears to have consisted more in an illegal extension of their boundaries, than in any extraordinary claim or severity concerning game within their privileged jurisdiction. The forests were divided between ancient, viz. those which existed before the *carta de forestâ*; new, those which had been created since; and those which were partly ancient and partly new, that is, those whose ancient boundary had been enlarged by subsequent perambulations. In the invidious sense in which the word *purlieu* has come down to us, our language retains a mark of the odium with which our ancestors regarded the borders of this encroaching neighbour. The perambulations of 21st Edward I. seem to fix the period when injustice had reached its limit: and the reaction (as with Irish tithes at present) was setting in the other way. The king complained that the boundaries of his forests were reduced by these perambulations too far within their ancient limits. However, Edward took the hint, and consented to the disafforestations, on condition that the parties, who sought the benefit of them, would in return forego certain claims of common. The confirmation of the forest charter, like that of *Magna Carta* it-

self, after having been repeated thirty times, became only a form. The form was dropped in the fourth year of Henry V. The forest counties from the beginning of the fourteenth century, had ceased to be objects of compassion to the counties in which forests did not happen to exist. The incredible folly of Charles I., in the case of Waltham Forest, revived a grievance too obsolete to be known to any body but antiquarians. Parliament was called in. The metes were fixed as they had stood in the 20th year of the reign of his father, and all subsequent perambulations and presentments were declared void. Lord Coke seems extreme, when he insists that afforestation was at no time a real prerogative, but a mere encroachment on the subject. The royal power of afforesting was stopped, as above, in England, in A. D. 1305; but in Scotland the grievance was practically felt within the last 150 years. An application to the crown against such future grants was earnestly recommended by the Supreme Court as late as A. D. 1680.

There is as little left for an English parliament of the 19th century to do in the point of jurisdiction, as in that of boundaries; unless it may be thought worth while to repeal, by express enactment, that which it has been the interest of all parties to allow to drop into disuse. One of the chief objects of the institution of justices in eyre by Henry II. (A. D. 1184), seems to have been the superintendence of his forests, in the court of justice seat, which might be held every third year. If we compare the absence of preceding complaints with the sensation raised throughout the country by the arbitrary misconduct of the court, held under the Earl of Holland in the 8th Charles I. (A. D. 1632); we are authorized to infer, that this jurisdiction had previously been exercised with as much moderation as (or had, in most instances, already given way to) the ordinary administration of justice. This court was revived only once, soon after the Restoration. The Earl of Oxford appears to have been sent on this useless journey for form only, since no report appears to be extant of its proceedings.

Matthew Paris (with the prepossession which a monk naturally would feel for a zealous and unfortunate Crusader) calls Richard I. *in pace clementissimus*. The fact in allusion to which this panegyric is pronounced, entitle the Achilles of romance to the praise of humanity, not only in the ordinary intercourse of peace, but in those sports which most partook of the violence of war. That virtue was rare enough of itself to justify his release from purgatory; an event which, upon the authority of a vision by the Bishop of Rochester, is stated to have taken place, together with that of Stephen Archbishop of Canterbury, in the year 1232. It is to the infinite credit of Richard, that, in an age when the privileges of the chase were identified with martial spirit, and with

the training to martial exercises, the great captain of his time should have, of his own accord, introduced the earliest relaxation of punishment into the forest code. The Duke of Wellington, who threw out the previous game bill by his own vote, might have profited by the parallel. Instead of the horrible mutilations inflicted by his predecessors, Richard substituted abjuration of the realm, imprisonment, or fine. Blackstone commits no slight anachronism when he suggests that this was done, "probably finding that severity prevented prosecution." He had better have been content with the contemporary reason given by the chronicler: "The former sentence seemed too inhuman to King Richard, that men, created in the image of God, should be endangered in life or limb on account of animals, which, according to the law of nature, were given to all: by such doings he would have appeared to be worse than the beasts themselves." The charters extorted from John, and from Henry III., added nothing to this voluntary concession, save the limitation of the imprisonment for forest offences to the specific period of a year and a day, and the caution that an offender should not be obliged to abjure the kingdom, except in case of not being able to find sureties for his future good behaviour. The moderation of this protection, in behalf of the royal preserves, can only be understood in our day by comparing it with the terms which the nobility struggled for and obtained in the following reign. Whilst their sovereign, in his own case, had been restrained to one year's imprisonment, the barons, in 3d Edward I., stipulated for an imprisonment of three year's against trespassers in their parks. By the 21st Edward I. they acquired the farther right of slaying such trespassers as would not surrender. When subjects had once raised such a battlement of savage legislation around the palings of their parks, the forest law became a standard of almost comparative forbearance; its minor penalties would be thrown into the shade, and in all probability abandoned. Personally, we should take pleasure (whatever may be the subject) in seeing the cumbrous learning of earlier times, when it has once fallen into desuetude, repealed by positive enactment; but, in point of fact, as tribunals of criminal law, the forest courts are obsolete. They have been long superseded by the punishments of universal application, which successive acts of parliament have created in respect of game.

If the king's prerogative of personal enjoyment was confined within narrow bounds, this is equally true of that species of prerogative by which alone any *privilege* could be created in regard to game. The law on this point has undergone no alteration: it is the same now as in the days of the Plantagenets. The only privilege of this kind which can be conferred upon a subject, consists in the franchises of chase, park, and warren. The

franchise of free fishery was an object of greater jealousy, and was put under early restriction, and must be as old as the reign of Henry II. The existence of this prerogative is admitted on all hands by the text writers; judicial proof of the constant exercise of it for a considerable period of our history, abounds in every collection of records: the only question is—what right did it convey? In case Blackstone had examined this point with any accuracy, he would not have obscured it by his observations, or made it the centre whence he has radiated darkness over the surrounding subject. Edward I. ordered a valuable inquisition, in the second year of his reign, with the view of looking up and recovering all rights appertaining to his crown. In this he inquires, *de omnibus libertatibus*, and directs specially a return of all such persons as, “without warrant, shall have appropriated free chase or warren, or who, being entitled to them of old, shall have improperly extended them.” It will be recollected that the judges, in the monopoly case, agreed, “None can make a park, chase, or warren, without the king’s licence.” More goes, therefore, towards making a legal park than the inclosing a certain number of acres within a wall, and stocking them with deer. We are not aware what is the last instance of the grant of any of these franchises; but as late as the reign of Elizabeth, and James I. parliament provides, by excess of caution, in certain statutes, that the benefit of them is not to be extended to any parks but those which exist by royal licence. Lord Hardwicke, in 1736, declined giving an extra-judicial opinion, whether the erection of a warren for rabbits was a private usurpation of franchise for which a *quo warranto* would lie. His reserve might arise from the degree to which courts of law had apparently sanctioned, as against the commoner, the lord’s use of his waste for this purpose. In the case of deer, the statute 7 and 8 Geo. IV. c. 29, has avoided all question concerning the legality of a reputed *park*, by omitting the word altogether, and substituting, “any inclosed land wherein deer shall be *usually* kept.” To wilfully course patrician deer therein is simple larceny; but rabbits and hares are comparatively plebeian. In order to complete the crime, they must be “taken” in the night; and “in a warren or ground *lawfully* used for the breeding or keeping the same.” Not a word is said to explain what that may be; and even there this offence is left only a misdemeanour.

Different creatures are the subject of these different franchises. The real privilege in question depends on the distinction between the right to breed and *preserve* game, and the right to *take* it: modern preserves will enable us to understand its meaning. Every one, by common law, might do the last upon his own land; it required a franchise to authorize the first. Different reasons are handed down as being the grounds of the original authority by

which the king claimed and exercised a control over the preserves of his nobility; they are so unsatisfactory and inconsistent, that any attempt to understand and reconcile them must be admitted to be lost labour. At one time, the privilege is supposed to be grounded on the plea that a franchise forms a *sanctuary*, and place of royal refuge for beasts and birds; at another time it is a *prison*, to which none can adjudge them in restraint of their natural liberty, without warrant from the crown. These franchises are elsewhere described as being *matters of pleasure*, in which the greater part of mankind are inclinable to exceed, and which brought no profit to the commonwealth; therefore it is concluded that land could not be converted to this unprofitable purpose without the sanction of the king, as the head of the commonwealth. Again, in other places, they are spoken of as absolute *nuisances* to a neighbourhood, from the fact "that none can so keep the animals therein but that they will break out of themselves." The complimentary inference would be, that the king had the right to legitimate nuisance, and that every instance of the creation of such a franchise was an exercise of the right. Ridiculous as these fictitious and arbitrary reasons may appear when put forward as the legal foundation of a prerogative (and yet they are scarcely more absurd than some other prerogative refinements), they prove two points beyond all dispute:—first, that no such absurd suppositions would have been had recourse to, in case the judges could have found so plain an origin of the franchise, as that it was one carved and derived out of the exclusive ownership which, in respect of game, the common law had attributed to the king: in the next place, it is evidently a right to the *preservation* of game (not only in distinction from, but in opposition to, an implied general right of *taking* it), to which all the reasons are directed. This is felt to be the difficulty for which the finder of a reason had to account. The nature of the franchise accords with the etymology of the principal words applied to it: park (from *parquer*, to enclose), or, in feudal Latin, *parcus*, is the word used for a parish pound. When Stow says that Henry I. (A.D. 1117) had a park at Woodstock, wherein were lions, leopards, camels, &c., brought from foreign parts, it does not follow that they were more at large than in the Zoological Gardens. Warren is *garenne*, or, as formerly, *varenne*, Anglicised, and is derived from the German "*wahren*," to guard. *Diffensa*, and *defense* (the immediate origin of *fence*), is another of the expressions by which (according as the documents are in Latin or French) these privileged localities are described. A sanction for the artificial growth and custody of game, accords with the derivation of the words, with the reasons above assigned, and with the whole history both of the franchises and of the general law upon the subject, far better than either of

the contradictory suppositions which have been sometimes suggested. Before the franchise can mean either a title to take the game upon one's own ground, or a title to prevent other people from taking it there, it must be shown in a way very different from what has been yet attempted, that any franchise was ever wanted for one or other of these purposes. It is singular that Spelman himself should first date this privilege as one *venandi*; and, afterwards, as one, *defensæ aliis prohibitæ*. The two definitions are inconsistent and inaccurate; but it was reserved for Blackstone to abuse the first of these misrepresentations into the foundation of a false prerogative.

Unlike the doctrine of *dominium directum* in the soil, this power of prohibition and control over preserves of game was no idle compliment to the titular supremacy of the crown; it was an authority vigorously exerted. The king's own game preserves were confined by national vigilance to the precincts of his sixty-eight forests. Henry VIII. obtained from parliament the addition of that of Hampton Court. On the other hand, the king never increased the number of chases for the amusement of his subjects beyond thirteen; nor that of parks beyond 781. The number of warrens is, as far as we are aware, nowhere noticed; but any encroachment on this branch of the prerogative was, for a long time, closely watched. Warren or not—that is, preserve or not—for among birds of warren are partridges and pheasants—as well as the existence of a licence from the crown, were both questions of fact, to be ascertained by a jury. The hundred rolls are filled with these presentments. The franchise would be negative and thrown open, wherever the inquest found (as is constantly the case) that the franchise had been exercised, but that there appeared no evidence of a title to the same: it was not necessary to insert an express saving of this prerogative in the modern statutes. In opposition to our former policy, it is true, that modern statutes for the preservation of game appear to have been passed avowedly with the intention of a general preservation both without as well as within these privileged places: yet a prerogative is tenacious of life; once clearly established, it cannot be destroyed by influence. The question to consider is, whether it is impossible to put a fair and intelligible construction on the above statutes, consistent with the continuance of the royal prerogative over preserves; the words of the statutes, as far as *preserving* goes, are satisfied by the cumulative penalties, and by the new powers which they confer upon the lord of the manor and his keeper, enabling them summarily to prevent the destruction of game by poachers; the discouragement of poaching has nothing to do, however, with the systematic dedication of a district to the accumulation of game within it. The legality of that unnatural excess in breeding and

feeding game, out of which so much of the mischief has grown, may still remain a distinct point, independent of the statutes.

It may be worth the while of some of our preserve proprietors—who, for the sake of their diversion, are tempting Israel to sin—to attend to the principle of the above distinction. A preserve for hares, partridges, and pheasants, constructed on the principle of raising the greatest quantity of game the ground can bear, may be illegal without a licence at the present day. In case the provocation of *battues*, not those only between the squire and the pheasant, but those of late so frequent between the poacher and the keeper, should call upon his majesty's attorney-general to inquire into the title by which this or that preserve has been established, it is possible that but few of the chief preservers, in our most highly preserved counties, might be able to make good their practices in a court of law. There are limits on the use of property; a man may not always either legally or morally do what he will with his own. What it is which constitutes a preserve, as distinguished from the ordinary state of the surrounding country, is a question of fact; in the actual state of our inclosures it may not always be readily decided; but as the fact was one which, on a consideration of all the circumstances of the case, juries were in the habit of determining in the reign of Edward I., and of his successors, twelve good men and true would probably find the means of mastering the difficulty at the present day.

It does not follow that *rights* are unimportant because kings treat them with indifference, or dispose of them for a joke. The Conqueror, it seems, like some other great personages, loved a pun. William de Warrena, the most powerful chief who came over with him, is said to have had all his land *warrenata*, that is, turned into free warren, for the sake of the play upon his name. The value which was once set upon these franchises is sufficiently attested by the frequency of the grants; and still more by the frequency of presentments, for the purpose of having the usurpation inquired into and set aside. The expence which parties were ready to incur in the maintenance of their title, when disputed, may be judged of by the fact, that during the presidency of one abbot their litigation in support of their free warren cost the abbey of St. Albans upwards of 1000 marks. (Matt. Paris, 1070.) From the name of the principal defendant, as repeated in another place (488), it appears that this dispute took place in the year 1240, and that the abbey recovered their damages as laid, at forty marks. The form of trial is mentioned as having been had recourse to by consent. The verdict was returned by a jury, and the jury consisted of ten persons. The disproportion between the expence of an action and the amount of damages recovered in it is far from being a novelty of to-day. It is not to be wondered at, therefore,

that the grantees of a favourite interest, so liable to be invaded, should seek to procure a cheaper remedy against mere wrongdoers, especially in a case where the damages capable of being legally proved would inadequately represent the whole injury incurred, and where the offender in many instances might be expected to be without the means of discharging the amount. Spelman says that the diploma of warren contained a fine on sporting-trespasses of ten pounds to the king, and the same apparently to the grantee. In case the 3d Edward I. did not extend to warrens, the latter part of the forfeiture would act as liquidated damages. However, the abbey seem, in the above case, to have taken their damages generally at common law; and, although this was before the Statute of Westminster, not to have been required to prove an *asportavit*.

Wherever the law establishes a right, it is its bounden duty to put the protection of that right into an available form. The criminal law ought at once to be brought to bear against a violation of the right, as often as the violation proceeds from a criminal intention. The only objection which can be taken to the course pursued in the present instance is, that the protection of the criminal law was unequally and extravagantly administered. It was unequal, because, instead of protecting game generally, it took under its patronage a few privileged places. It was extravagant, because, within the sacred circle it applied a scale of punishment disproportionate and revolting.

The general state of the law on this subject naturally accounts for the clause in the *forma pacis*, 17th Henry III. (A.D. 1232). In apparent analogy to the period which the forest charter had fixed in the case of the royal forests, imprisonment for a year and a day was hereby imposed generally on malefactors in parks and *vivaries*. *Vivaries* is an obsolete word, which seems to have comprehended all franchises for the custody of game, whether by land or water. This provision is repeated in the year 1246, with a fine of three years' value of the land and twelve pledges. Matthew Paris describes these laws as being framed *cum rigoris incremento*. The penalties under them were, however, soon thought inefficient; to a certain extent, in a case of this sort, all penalties will be always found so. Accordingly imprisonment for two additional years was added (as was mentioned above) by the 3d Edw. I. The only stand which the crown seems to have made against these increasing severities, is the refusal, at the parliament of Merton, A.D. 1236, of the request that the lords might have their own prisons for trespassers in their parks and ponds. By 21st Edw. I. trespassers within these franchises, who would not surrender to the keepers, might be slain. This summary method of arrest extends to a case of flight, as well as of resistance. It was afterwards

transferred by 3d and 4th William III. to lords of manors in night poaching. Lord Ellenborough called poaching only a civil trespass. But suppose it to be a misdemeanor: homicide in the advancement of public justice, by preventing the escape of an offender, is justifiable in felonies only, and not in misdemeanors. So formidable a distinction would raise instantly and infinitely the importance and value of the right. It must have stood out during centuries in striking contrast with the circuitous, expensive, and imperfect remedy of an action of trespass. For under our narrow definition of larceny,* at common law, an action long continued to be the only remedy in all offences of poaching whatsoever, when they were committed beyond the boundary of a franchise. It continued to be the only remedy in the case of a qualified poacher up to the date of the present bill, and we lament to see that it still continues to be the only remedy for trespass by the lord, or by his keeper, on any freehold within the manor in pursuit of game. This is a most unwarrantable favour; the lord of the manor is no more entitled to any such unequitable privilege than the Pope of Rome.

There is no shadow of colour for the sort of claim set up on behalf of lords of manors. The notion that any interest in game formed an essential part of the franchise of a manor or lordship, is quite incompatible with the contemporaneous existence of the specific franchises which have been just described. The nature of the manorial privileges in any given manor depends on the contents of the particular grant. Blackstone himself (vol. ii. p. 38) expressly denies that the lord of the manor, as such, can justify sporting any more than the rest of his fellow citizens: the whole current of our legal history is to the same effect. In the fifth year of the reign of Queen Anne, Serjeant Darnel said, in argument, that the lord of a manor might shoot game any where within his manor, upon any man's freehold; but this was denied by Holt and Powell, justices, unless the lord had some other privilege, and they would not suffer him to insist upon the point.

* Statutory amendments without end have been the necessary consequence of restraining the offence originally to "*personal goods*." The confusion and inconsistency are in many cases very partially and awkwardly removed. Creatures *feræ naturæ* are not *goods* whilst they continue at large; when reclaimed, they cease, in some instances, to be *personal*, and become *realty*. Thus deer in a park, fish in a pond, and pigeons in a rookery, are heir looms. What Wooddison (vol. ii. p. 380) calls an error in Hawkins, is an incongruity in the law.

ART. VII.—THOUGHTS ON SECONDARY PUNISHMENTS, *in a Letter to Earl Grey*. By Richard Whately, D.D., Archbishop of Dublin. *To which are appended, two Articles on Transportation to New South Wales, and on Secondary Punishments, and some Observations on Colonisation*. 8vo. London. B. Fellowes, 1832.

The character of Dr. Whately stands deservedly high in public estimation; and it was therefore with much anxiety that we looked for the result of his reflections upon a subject which requires, more than any other in ethical jurisprudence, the application of sound, acute, and temperate reasoning. That the expectations we had formed have been fully gratified we will not say; but that the pages before us contain matter worthy of the deepest attention we cheerfully acknowledge.

We had hoped to find the opinions of Dr. Whately free from the dangerous, but almost universal, error, that *fear* is the only motive to deter from crime; and that the excellence of a criminal code consists in its severity. The system of governing men by terror has been so long acted upon without success, that we had expected to find some other course suggesting itself to the mind of an intelligent Christian divine. So far, however, is the Archbishop of Dublin from recommending the introduction of other principles into our penal jurisprudence, that the whole tenor of his letter is to urge the necessity of a stern and rigid adherence to penal inflictions. To this every other consideration must give way; and the amendment of the criminal is made a matter of very inferior importance. This is to treat men like brutes—a course of proceeding which Dr. Whately avowedly recommends.

“In fact,” he says, “although no one considers the brute animals as moral agents, every one is well aware that it is possible to operate on them through the fear of punishment. It is not reckoned an useless cruelty, or an absurdity, to attempt to teach a dog, by beating, to abstain from worrying sheep. Any one, therefore, who, well knowing that irrational animals can be trained, by fear of punishment, to check their impulses, yet would proclaim impunity to any *man*, who may be partially or wholly reduced to the state of an irrational animal,—such a one plainly shows that he is allowing his views to be influenced by irrelevant considerations.”

Here, then, is the true theory of punishment:—A man who transgresses the law becomes a brute animal, only to be acted upon, as such animals are, by the terrors of the lash. But did it never occur to his Grace that, although the most approved mode of restraining brutes may be by violence, it by no means follows that

the effects are the same upon the human mind. The beaten dog loves his master; but the scourged thief hates the law. Still there is a simplicity and a facility in this theory which entitle it to attention. The felon and the dog, the misdemeanant and the donkey, may all be corrected by the same whip; and it would be as vain an attempt to convince the thief or the apple-stealer of his sins, as to urge the hound or the ass to repentance.

We are far from denying that *terror* and *example* are not legitimate objects of punishment; but we contend that to make them the sole end of it is a most mischievous mistake. Men are not withheld from crime by the dread of punishment *alone*; but by higher, and better, and more powerful motives also,—by the love, implanted by education, of honesty and integrity, by a regard to the good opinion of their fellow creatures, and by a knowledge that their own real interests are best promoted by abstaining from crime. These restraints once removed, the fear of punishment will soon be overcome. To depend upon that sanction alone in the treatment of criminals, is to display an ignorance of human nature, and to abandon the assistance of the best and strongest motives to a virtuous and honourable life.

It has always appeared to us, that it is a great mistake to adopt towards criminals an entirely different system from that which is pursued with regard to the rest of the community. They have, it is true, manifested a stronger disposition to crime than those who have never infringed the law; but they are still men, and, as such, capable of being acted upon by the same moral government as others: nor are they in fact less the objects of that tender care which the state ought to extend to every individual. In the management of a family, of a school, or of a larger community, where every disposition to evil, from the most dangerous proneness to crime down to a mere leaning towards error, is to be guarded against, we do not find that a cold and unmixed severity is productive of the most successful effects. On the contrary, a judicious benevolence, which, even while it punishes, has no other object in view than the benefit of the individual, and consequently of society at large, while it conciliates the love, will secure the virtue of those who live under its sway. Even those who have lapsed into crime, while suffering the penalty of their error, will acknowledge, in its justice and in its mercy, the influence of a spirit like this.

Dr. Whately, it is true, does not altogether overlook the reformatory principle; but it occupies only a *third* place in his definition of the objects of punishment.

“ The points which most persons would look to, as important requisites in any kind of punishment that is to be awarded, are—first, *and above all other considerations*, that it should be *formidable*; i. e. that the apprehension of it should operate as much as possible to deter men from crime,

and thus to prevent the necessity of its actual infliction; secondly, that it should be *humane*; i. e. that it should occasion as little as possible of *useless* suffering,—of pain or inconvenience that does not conduce to the object proposed; thirdly, that it should be *corrective*, or *at least not corrupting*, tending to produce in the criminal himself, if his life be spared, and in others, either a moral improvement, or at least as little as possible of moral debasement; and lastly, that it should be *cheap*."

That the denunciation, nay, that the infliction of *formidable* punishments are insufficient to deter criminals from a repetition of their offences, is sufficiently proved at every sessions and assizes in the kingdom; and we are surprised, therefore, that Dr. Whately has not seen the necessity of calling in the assistance of other motives than those which the mere dread of punishment affords to influence the disposition to crime. He seems to regard moral improvement as a contingency scarcely to be taken into account; and indeed under the present system such is nearly the case; but who shall say that, under the influence of a benevolent and well devised scheme of moral instruction, the moral improvement of the criminal may not be effected?

Though differing widely with Dr. Whately with regard to the principle of penal laws, which we say ought not to be confined to a system of *terror*, we cordially agree with him with respect to many of his suggestions on the subject of secondary punishments. Instead of transportation, he recommends confinement in penitentiaries, accompanied with hard labour and partial solitude,—a course which has been found highly beneficial in the United States of America.

"In all cases, also, convicts should never be allowed (whatever may be the regulations for the hours of work) unrestricted intercourse when unemployed. The pleasures of society amongst convicts,—besides diminishing the effect of punishment most to those where it is most wanted, viz. to those who have been accustomed to bad company,—can scarcely ever fail to have a very corrupting effect. No expence or trouble connected with buildings, or superintendents provided for this purpose, ought to be grudged."

With regard to the discipline of a penitentiary, he says:—

"The plan which, as far as I am competent to judge, seems to me on the whole to promise the most favourably, is that which is suggested in the article from the London Review; but which has not, that I know of, been hitherto any where tried—viz. that of requiring from such criminals as are sentenced to hard labour, a *certain amount of work*; compelling them indeed to a certain moderate quantity of daily labour, but permitting them to exceed this as much as they please; and thus to shorten the term of their imprisonment by accomplishing the task in a less time than that to which they had been sentenced. I would also allow them, for a certain portion of the work done, a payment in money; not to be

expended during their continuance in prison, but to be paid over to them at their discharge,—so that they should never be turned loose upon the world entirely destitute. My object in this would be to superadd to the habit of labour, which it is the object of most penitentiaries to create, an *association* not merely of the ideas of disgrace and coercion with crime, but also of freedom and independence with that of labour.”

On the subject of the particular description of labour in which it is desirable to employ convicts, he makes some sensible observations; and attaches less value than most other writers on prison discipline to that most absurd of all modern inventions—the treadmill. In the following extract he again insists on the necessity of punishment being rendered *formidable* rather than corrective.

“In respect of the kind of labour in which it may be thought advisable that convicts should be employed, I would suggest that, though it is in itself very desirable that it should be profitable enough to go some very considerable way towards defraying the expence of their maintenance, this is by no means a point of so much importance as many others, to which accordingly we should always be ready to sacrifice it. The best conducted of the American penitentiaries are said to defray fully all their own expences, from the proceeds of the prisoners’ labour. This I conceive cannot be expected in any country which does not combine, to such an extraordinary degree as America, the advantages of a very high value of labour and cheapness of provisions. But even if this, or something approaching to it, could be attained, I should still say that it is an object of far less consequence than the moral improvement of the offenders, *or still more, the prevention of crime by the apprehension of punishment.* That a penalty should be *formidable*, is, as I have said, *decidedly the first point* to be looked to; that it should be *corrective*, is another point of great, *though far inferior* consequence; that it should be economical is (though by no means insignificant) a matter of only third-rate importance.

“There are several descriptions of labour which have each some circumstances to recommend them.

“And it would be, besides, absolutely necessary to resort to more than one; inasmuch as the kind of labour that might be found most suitable for able-bodied adult males, would not be adapted for infirm persons, women, and children.

“I should be disposed to give a preference, other points being equal, to such kinds of labour as the convict might resort to after his discharge, as a means of maintenance; and, with this view, to such as may be carried on without the aid of much machinery. In this respect, the labour of the treadmill is less eligible than many others. It has, however, many great advantages to counterbalance that defect. In many instances, recourse might be had to some of the less artificial and more laborious operations of husbandry—such as trenching, stone-picking, &c.

“This would require a larger number of such overseers as could be relied on for vigilance and firmness, to prevent the escape of the convicts; but I think there are sufficient advantages on the other side to make this plan well deserving of a trial. In particular, it would afford

great facilities for the adoption (which I consider as highly important) of the system of task work."

Dr. Whately, of course, contends for cleanliness, order, and a due attention to health, in the management of a house of correction. "A strict, and even *troublesome*, enforcement of cleanliness and ventilation, and also of quietness, order, and decency, should be aimed at in every penitentiary, as having the double advantage, of not only saving from unnecessary suffering those who, generally speaking, will be of the less atrocious class of criminals, but also as even adding a wholesome terror to the punishment in the eyes of all those whom it is most important to deter." We do not like the system of rendering the acquisition of good habits unnecessarily troublesome; nor is Dr. Whately's recommendation, in this instance, consistent with the principle which it will be remembered he has enforced in another passage, of superadding to the habit of labour, associations connected with freedom and independence. Where habits of quietness, order, and decency, are rendered uselessly and vexatiously troublesome to the criminal, it can hardly be expected that, on quitting his prison, he will not do his best to forget them.

The discipline of penitentiaries is as yet, even in America, where great attention has been paid to the subject, merely matter of experiment; and the Archbishop very properly urges the necessity of a public inquiry into the results of the attempts which have been made both at home and abroad.

"This, and some other hints which I have thrown out, are intended merely to suggest materials for the consideration of those on whom the task may devolve, supposing the punishment of transportation should be abolished, of devising and regulating systems of secondary punishments. I do not think it would be possible for any one man, even if he could devote himself exclusively to the work, to collect all the facts and make all the observations, much less try all the experiments, which would be requisite to enable him to ascertain the comparative advantages and disadvantages of all the different modes of secondary punishment that have any where been adopted or thought of. Nor do I think that even the combined labours of a number of the most active and intelligent men, would be sufficient for the full and satisfactory solution of all the important questions relative to this subject, unless, according to my former suggestion, they were enabled to make *trial*, for some time, of the several different penitentiaries, established on different plans, such as they might think best deserving of a trial, and subjected to their inspection and superintendence.

"Nor, again, do I conceive that this suggestion could be properly acted on, except by persons not only selected for their intelligence, experience, or habit of attention to the subject, but also able to devote the principal part of their time and thoughts to the business. For this reason parliament, or the members of administration, would be unable,

without calling in other assistance, to do justice to an inquiry so multifarious and so important.

"I will take the liberty, therefore, of most earnestly recommending the appointment of a Board of Commissioners, analagous to that which is now occupied with the no less important subject of the poor laws, and from whose labours every one, who is acquainted with the character of the individuals composing it, must hope for the most favourable results."

We are happy to find the Archbishop of Dublin enforcing, in the following passage, the necessity of adopting some new system of legislative inquiry in the place of that slovenly and absurd mode in which our laws are at present concocted.

"Whether the legislature is constituted in one way or another, it is clearly impossible that it should be capable of going through, with proper care, all the necessary details of that vast and heterogeneous mass of business which belongs to its decision. And those who are at all acquainted with parliamentary proceedings have no need to be reminded how much slovenly legislation has resulted from the non-adoption, or very slight and imperfect adoption, in the highest department of all, of that important principle, division of labour; but for which even the humblest arts could never have been brought to any degree of perfection. Let the task of minute investigation, and uninterrupted reflection on each subject, separately, be entrusted to a small number of competent persons, expressly selected for the purpose; and let the legislature examine and judge of the result of their labours, adopting, rejecting, or modifying their suggestions, as it may see best; and I am much mistaken if a striking effect will not be produced, in the increased wisdom of its enactments, in all departments in which such a procedure shall have been adopted."

At the conclusion of his letter, Dr. Whately adds a few remarks on capital punishments and the effect of executions.

"Capital punishments could not, indeed, with any safety to the community, be entirely abolished: but I am strongly inclined to think that their effect in preventing crime would be much increased, and consequently the necessity for inflicting them, and other punishments also, greatly diminished by doing away with *public* executions. All the ends of justice would be answered, and much better answered, by a private execution in presence of a certain number (say twelve) of respectable individuals chosen by lot to witness the execution, and duly to certify it under their hands. The publication of this certificate would remove all doubts as to the infliction, and the proper infliction, of the sentence; and the many and serious evils, which experience shows attend public executions, would be avoided."

A suggestion more injudicious, and more objectionable in every point of view, than this, could not easily have been made. The administration of justice, in all its branches, should be open as the day. Close courts and private executions are the practices of a

barbarous age; and even if it were possible to preserve such practices from abuse, how can the public be persuaded that they are preserved from it? Distrust and suspicion, from which the execution of justice should be wholly free, would inevitably rest upon it, and a thousand absurd tales would be credited, to the disgrace of the laws and their administration. This is the dilemma into which barbarous institutions necessarily lead—they are found to be injurious, and fresh barbarisms are resorted to in order to amend them.

Nor are we more inclined to coincide with Dr. Whately in his observations on the *speediness* desirable in executing the sentence of death. While that ultimate punishment may be inflicted for such offences as the law of England has selected, we would not take one minute from the contingency of the commutation of the sentence.

The present and former parliaments have done something towards instituting an inquiry into the nature and application of secondary punishments. A reformed parliament must do more—they must deliberate, and they must also act. The time is speedily approaching when improvements like these can be no longer delayed.

Dr. Whately's letter occupies a very small portion of the volume before us; the remainder of it being devoted to an appendix, containing an article on Transportation, from the London Review, partly written by his Grace; an article on Secondary Punishments, by one of his friends (from the *Law Magazine*), and some suggestions for the improvement of the colonization system, from the pen of another friend.

ART. VIII.—REVIEW OF PARLIAMENTARY PROCEEDINGS.

SPIRIT OF REFORM.—REFORM BILL.—REFORM IN JUDICIAL ESTABLISHMENTS: *Court of Chancery; Privy Council; Ecclesiastical Courts; Court of Exchequer in Scotland; Bankruptcy Court; Local Courts.*—CRIMINAL LAW: *Act against Coining; Forgery Punishment Act; Abolition of Punishment of Death for Cattle Stealing, &c.*—PROCEEDINGS OF REAL PROPERTY COMMISSIONERS—OF COMMON LAW COMMISSIONERS: *Inquiry into Inns of Court.*—POOR LAWS.

The last session of the last unreformed parliament has closed, after having given many manifestations, in the tone and spirit of its proceedings, of the great impending change. Throughout the

whole of its sitting there has been an adumbration of reform. The strength of corruption, the reverence for abuses because they were ancient, the hatred and fear of change, even though that change were improvement, have already passed away, as "coming reforms cast their shadow before." The anticipation of inquiry and amendment was strong upon every mind. Harassed as parliament has been by the interminable debates on the Reform Bill, it has not been idle on the various questions of legal reform; and though much has not been executed, the ground has yet been prepared for many great improvements, and a hope may now be entertained that serious and extensive reforms in our judicial institutions will at length be effected.

The passing of the Reform Bill has rendered the last session perhaps the most remarkable one in the whole history of parliament. In the face of an unexampled opposition, a great act of national justice has been accomplished; and the constitution of the House of Commons renovated, and indeed preserved. Of all the main principles of the bill, its disfranchising and enfranchising clauses, its rendering registration necessary, and its shortening the duration of elections, every friend to good government must approve; but with regard to the application of those principles to particular cases, and the details of the measure, much difference of opinion may reasonably exist. The incongruities of this new system are not few in number; and much of the machinery has yet to be tried before we can pronounce upon its success.

Many of these evils might have been avoided, had government in the first instance expended a due portion of time and deliberation in framing a full scheme of the projected measure. Unfortunately, the original bill was introduced in a crude and imperfect form; and, like Mr. Edgeworth's house, in which all convenience and symmetry were sacrificed in order to preserve a single chimney, the Reform Bill has suffered throughout all its stages, because it has been thought necessary to adhere in substance to the original bill. The objections of its numerous antagonists, and the tardy deliberations of its friends, were the means of discovering and removing many of its imperfections; but that when the experiment of its practical application has been made it will not require revision, no one who is acquainted with the prodigious extent of its operation can doubt. While we are upon this subject, we cannot avoid remarking what facilities the existence of a class of officers, like those pointed out in the article on Municipal Institutions in our last number, would have afforded to the working of the Reform Act. The overseers are already, we understand, in a state of great perplexity, from which they will be no sooner rescued than they will go out of office, and make way for others as ignorant as, on the first performance of their duties, they were themselves. To

criticise the Reform Act is not our intention ; enough of jealous eyes there will be to detect its faults, and of ready tongues to proclaim them ; but the great measure once carried, the amendment of it, if requisite, will be a task comparatively easy.

It would be doing injustice to the high station, the extraordinary talents, and the meritorious intentions of Lord Brougham, not to give the first place to the measures of reform projected by him. It was not until the session was far advanced that his lordship stated, in the House of Lords, the plan adopted by him for reforming the abuses of the Court of Chancery. Of course it was too late to proceed with a bill brought in at this period of the session ; but it remains over for the consideration of their lordships till the next parliament. Into the details of the proposed reforms we shall not enter in this place ; they require a more accurate and extended investigation. In addition to the changes projected in various departments of his own court, the Chancellor adverted to a subject of the highest importance,—the propriety of separating the political and judicial functions of the Great Seal. Upon this question we have, upon more than one occasion, expressed a decided opinion ; and it is with singular pleasure that we find an alteration so essential to the interests of justice likely to be carried into effect.

The spirit of reform is visiting other courts than the Chancellor's. It is almost incredible that the iniquities, for we may justly term them so, of the Ecclesiastical Courts, should have been suffered to continue until this day. Bad jurisdictions, perverted to worse purposes, have long demanded a searching reform. Of the proposals of the Ecclesiastical Commissioners we have spoken in another place ; and we shall here only notice the bill introduced by Lord Brougham, for transferring the appellate jurisdiction of the ecclesiastical courts to the privy council. That a transfer of this jurisdiction was desirable, nay, that it was necessary, no one can doubt ; but whether the arrangement which transfers it to the privy council be a judicious one, is altogether a different question. That a worse court than that of the privy council, in constitution and in practice, can be found, we do not believe ; and it was only of course with reference to some very considerable changes in that court that Lord Brougham could have proposed any addition to its appellate jurisdiction. But even supposing such changes effected, will they be such as to render the members of the privy council proper judges of appeals ? Would it not be far preferable to establish a respectable and efficient tribunal, resembling the *Cour de Cassation* of our neighbours, consisting of men of high legal acquirements, to whose judgment, in the last resort, the revision of all causes, ecclesiastical and others, might be referred, than to subject the suitors, as under the late Bankruptcy Court Act, to th-

wisdom of the peers, or, under the present bill, to the intelligence of the privy council. Some strong observations have been incidentally made in parliament upon the subject of the constitution of the council, and it is decided that some alterations are to be made.

The bill for abolishing the Court of Exchequer in Scotland (see *ante*, p. 299) has passed into a law, and upon the death or resignation of the present judges, the business of that court, if any can be found, is to be transferred to the Court of Session (2^d Wm. IV. c. 54.)

The situation of the new Court of Bankruptcy was introduced, as it was absolutely necessary that it should be, as one of the topics in the Chancellor's speech on judicial reform. He expressed in strong terms his satisfaction at the working of the new system, and pointed out the great saving in expenditure which had been effected; but great as that saving is, it is quite clear that it might have been greater. Upon one point only he had been disappointed—in finding that the judges of the Court of Review were greatly *under-worked*. It might indeed have been obvious to any one that this must necessarily have been the case, but Lord Brougham, it appears, was persuaded to appoint more judges than in his own opinion were adequate to the performance of the duty. Now, however, not even the most strenuous advocate for multitudinous judges can contend that there is sufficient business in bankruptcy to supply the four learned persons who preside over the Court of Review, and the Chancellor has therefore found it necessary to furnish them with some means of filling up their vacant time. In our last number we ventured to state, that previously to the construction of the "Court in Bankruptcy" some inquiry should have been made into the possibility of administering both insolvent and bankrupt estates under one and the same system, and of thus destroying a scheme devised for no other purpose than that of multiplying expence and difficulty. From the Chancellor's speech it appears that he is now of opinion that such a relation exists between these two branches of our law as to justify him in proposing to connect the jurisdiction of the judges in bankruptcy with that of the Insolvent Debtor's Court. This he proposes to do in a bill to be introduced "early next session;" but may it not be doubted whether a measure thus brought forward will not be too precipitate? It appears to us that not only the judicial administration of the bankrupt and insolvent law demands revision, but that the system itself must ere long undergo important changes. The late report of the Common Law Commissioners makes it quite manifest that the insolvent laws must be amended; and therefore to graft a new judicial establishment upon the old system seems only to do that which must shortly be undone. In fact, until the whole of this

branch of our jurisprudence has been submitted to an enlarged and deliberate examination it is quite in vain to erect either new Bankruptcy Courts or new Bankruptcy-Insolvent Courts.

Though the subject of local courts has been brought before the attention of government, no bill has been introduced either for the establishment of new tribunals or for the improvement of the old county courts. This we do not regret. It is a subject of infinite difficulty, and requires the fullest and most deliberate consideration. No benefits can be conferred greater than those to be derived from a well constituted system of local courts, and a rash and hasty experiment might lead to the postponement, if not to the destruction, of the measure.

One of the measures contemplated by Mr. Peel, before his resignation of office, as forming a part of his meritorious scheme for the consolidation of the criminal law, was the revision of the laws touching offences against the coin. There was scarcely any portion of our penal code which more imperatively demanded a reform than this. From the time of Edward III. to that of Queen Anne various statutes had passed, affixing the penalties of treason to the act of coining in its different branches, so that there were no less than *seven* offences of this kind punishable with death. The consequence was, that the conviction of offenders became difficult, and the crime increased with impunity. To abolish this severity was one of the first objects of the new statute (2 Wm. IV. c. 34), which has in every instance replaced the capital punishment with transportation for life. Other improvements of a minor character are introduced, which will tend both to render the law more intelligible and to facilitate its execution. It is singular that this important act should, as we have before remarked, have passed through parliament without so much as a single observation. Few circumstances could more strongly mark the change which has taken place in some quarters, with regard to the tenacious adherence to capital punishments.

Of this change another proof is to be found in the passing of the bill for abolishing the punishment of death in certain cases of *forgery*. This bill, which was introduced by the Attorney General, may be almost said to have passed the House of Commons without opposition. It is true that in the case of the late Forgery Act brought forward by Mr. Peel, the sense of the House of Commons was expressed in favour of a mitigated punishment, but this was only after a long and animated debate, in the course of which no one could say to which side of the question the majority inclined. On the present occasion, Sir Edward Sugden, who had formerly spoken in favour of retaining the capital punishment, acknowledged that it would be in vain to oppose the measure; and the only strenuous attempt at opposition proceeded from Sir

C. Wetherell. From the Lords, as there was too much reason to expect, the bill returned mutilated and disfigured. That Lord Wynford should have proposed an amendment, the object of which was to retain capital punishments in some cases, those who are acquainted with the character of his lordship's mind saw without surprise; but that the Marquis of Lansdowne, from whom better things might have been expected, should recommend a distinction totally unfounded in principle, and most injurious in practice, as we are well persuaded the amendment will prove, has been a matter of astonishment and regret to all who regard his character as a statesman. We cannot but contrast the crude and weak speculations of the noble marquis with the straightforward sense and the acute reasoning which distinguish Lord Holland's speech on this occasion. Lord Grey acceded to the amendment confessedly on experimental grounds. This course, though we regret that his lordship should have taken it, has yet some semblance of principle to recommend it. By the amendment, the forging of wills and of powers of attorney relating to the public funds still continues a capital offence. That it should long continue so is impossible. The anomaly will be too striking. The facility of rendering a forged will available is nothing compared with the ease and comparative safety of obtaining money upon a forged draft or bill, and yet the latter offence, occurring more frequently, more injurious to commercial credit, and committed with infinitely more facility, is visited only with a secondary punishment. With what feelings also will the public now regard the putting to death of a man for forging a will or a power of attorney, if indeed any judge should be found hardy enough to leave such an offender for execution?

In connexion with the subject of punishments we are happy to announce the passing of Mr. Ewart's bill for abolishing the punishment of death in the cases of stealing in a dwelling house to the value of five pounds, horse stealing, and cattle stealing, substituting the punishment of transportation for life. The measure, as it might be expected, met with considerable opposition in the House of Lords, where, however, it ultimately passed with certain amendments. These amendments consist in a clause restricting the governor of a colony, to which a convict is transported, from giving any pardon or ticket of leave to him, before he has served four years, if transported for seven; before he has served six, if transported for fourteen; and before he has served eight, if transported for life. The punishment also of transportation provided by the act is by the Lords' amendment made imperative, and consequently in all cases under the act the judges are compelled to pronounce the same sentence. The policy of both these amendments may be much doubted. At the time when it is agreed upon

all hands that some alteration must be made in our system of secondary punishments, and when inquiries have just been instituted into the best mode of effecting those alterations, it seems at least unnecessary, if not rash, to introduce so considerable a change as that in the present bill. It is difficult also to say in what manner it will operate upon the prosperity of our penal colonies; a point which does not appear to have been sufficiently regarded.

The rendering it compulsory upon the judges in all cases to pronounce a sentence of transportation for life, is a measure of still more doubtful propriety, which seems to have proceeded from the idea that punishments ought to be *certain*. But though punishments ought to be certain with regard to *infliction*, it is a very different thing from their being certain with regard to *degree*. Some latitude in the breast of the judge is absolutely necessary to prevent unequal and, in fact, unjust punishments. The starving mechanic who steals a lamb to support his family and the wholesale dealer in stolen cattle receive under this act the same measure of punishment. Several of the judges have on the late circuit expressed their regret in being compelled to pass a sentence which, if they had been able to exercise their discretion, they would not have pronounced. It may be remarked, as an instance of the want of principle and system which prevails in our legislation, that while in this act all discretion is taken away from the judges, in the Coining Act it is expressly given to them in cases where before they did not possess it. Lord Wynford took the opportunity, when moving for some returns relating to the administration of justice, to complain of the observations attributed to the judges upon the operation of his amendment, and endeavoured to show that it was not introduced for the purpose of taking away the judge's discretion, for that he might still refer the case to the consideration of the King. But how absurd is this! Why compel the Secretary of State to exercise *his* discretion, when that of the judge who tried the case would be exercised with infinitely more benefit. The operation of the amendment (if it is suffered to stand) must, be to render transportation for life the punishment for all these offences, however different in degree.

The only other measure relating to criminal law in the present session is a short act, entitled, "An Act for more effectually preventing embezzlements by persons employed in the public service of his Majesty." (2 Wm. IV. c. 4.) This act has the effect of rendering persons employed in public offices, and embezzling any chattel, money, or valuable security, guilty of felony, and subjecting them to transportation for fourteen years.

The spirit evinced in parliament on the subject of criminal jurisprudence, during the present session, has been decidedly

favourable to those improvements which the progress of society and the voice of the people have so long demanded. It is now obvious that the fierce and vindictive feeling which has too long governed our legislators is beginning to subside, and that moderate punishments, duly enforced, will at no considerable distance of time replace the sanguinary and impolitic inflictions which have so long disgraced the administration of justice in this country.

We have now to notice the parliamentary labours of the Real Property Commissioners. On the subject of Registration, we have already said so much in the first article of the present number, that we shall relieve our readers from any farther disquisition in this place. We shall only add, that a perusal of the evidence before the Select Committee has confirmed us in the opinion that the establishment of a system of municipal officers, as suggested in our article "on Municipal Institutions," would prove of incalculable service in bringing the project of registration to bear. In addition to the facilities which would be afforded to metropolitan registration by having these district officers, and all the conveniences of handing over the deeds and receiving payments on account of the registering, they would serve as a great check upon forgeries, should the parties be required to execute in their presence, according to the French custom. This is suggested by Mr. Hodgkin, in the valuable evidence given by him before the committee.

The other bills of the Real Property Commissioners were, we think, properly abandoned before the conclusion of the session. It was obvious that they could not receive the extreme attention which their great importance demanded, and when they are again brought before parliament we hope to see them undergo some more searching examination than a body of country gentlemen, a few gallant officers, and a select number of aldermen, can bestow.

The Third Report of the Real Property Commissioners has been presented to parliament. It chiefly relates to the subject of tenures. We shall make it the subject of some remarks in the next number of the Jurist.

The Common Law Commissioners have presented their Fourth Report, on the subject of *Arrest*, which has been submitted to parliament; but as we have, in the early part of the present number, given some account of this important document, we shall stand excused for not noticing it farther in this place. We were much rejoiced to find that, in consequence of Mr. Daniel Whittle Harvey's motion, the subject of *calling to the bar* is to be brought before the cognizance of the Common Law Commissioners. Such an event as this indicates pretty clearly the approach of other reforms. Close corporations, and all bodies not existing for the

public benefit, and not responsible to the public, may shortly expect a searching visitation. With regard to the Inns of Court, an inquiry into their constitution has become indispensable. The power possessed by the benchers is such as ought not to reside in any body of men, more especially when the vacancies in that body are filled up by self-election, and an *esprit de corps* is thus created which almost defies the operation of public opinion. The subject of legal education in England is one of much importance, and we hope to take an early opportunity of inquiring into it.

Mr. Baring's bill, touching privilege of parliament in matter of arrest, and for preserving the dignity of the House of Commons by excluding bankrupts and insolvent persons, has met with so much opposition that it has been abandoned for the present. In some respects this is not to be regretted: in the face of the Common Law Commissioners' Report, we do not see why the system of arrest should be extended, nor are we altogether friendly to a change which shall have the effect of excluding any class of persons from a seat in parliament. Let the people themselves be the judges of the character and station of those whom they send to represent them; and if they can find an honest and able insolvent, let them forthwith elect him. The only rules of exclusion that ought to be acted on in this and in similar cases, are those which are to be found in the breasts of sensible and impartial men. To give the fullest effect to all legal process against the property of members of parliament, and of all other persons, is of course greatly to be desired.

The wide and difficult question of the Poor Laws has been submitted, as we stated in our last number, to the consideration and investigation of commissioners, and the Chancellor has given a very favourable report of the progress which they have already made in their labours. We trust that we shall find some measures proposed strong enough to sweep away that offensive mass of absurd enactments and contradictory decisions called the Poor Laws.

ART. IX.—REVIEW OF THE PROCEEDINGS OF THE COURTS OF COMMON LAW.

Previously to entering upon the review which we propose to give of the proceedings of our Courts of Justice during the past year, it is proper that we should offer some explanation of the mode in which we intend to attempt this task, and of the objects which we have in view in its accomplishment.

The judicial decisions of the courts are fully and indeed redun-

dantly reported. Two, and in some instances three, different sets of reporters labour in each court; while, in addition to these, we have distinct publications of magistrates' cases, commercial cases, cases of practice, &c. &c. Many of the daily newspapers, again, have each their establishment for reporting "interesting trials," so that the public cannot, with any show of reason, complain that they are ignorant of what passes in our courts of justice.

But the information thus lavishly supplied is confined entirely to a narrative of individual cases. No attempt is made on any hand to give an idea of the practical progress of jurisprudence,—in what current the tide of justice is running,—whether the system of our laws, as exemplified in practice, is improving or deteriorating,—whether its tendency is towards liberal principles or towards confined and narrow views,—how the feelings of the judges display themselves,—and what, in short, is the history and progress of practical jurisprudence in this country.

To supply this deficiency will be one of our first objects; and in this attempt we trust that we shall make ourselves perfectly intelligible to our unprofessional readers, to whom we should wish to render these articles a source of interest, if not of information. In presenting a general view of the spirit in which our judicial proceedings are conducted, it will not be necessary for us, nor is it our intention, to enter into any criticisms upon the particular judgments of the courts, or to constitute ourselves into an appellate tribunal for the revision of all decisions whatever. The task which we propose to ourselves is altogether one of a different and more humble character.

The first question which an inquirer into the present state of our judicial proceedings would make is, with what feelings do those who preside over our courts regard the spirit of improvement which they witness on all sides of them, and how do they stand affected towards its introduction into their own domains? That a spirit of *change* is abroad (and it depends upon the good sense and prudence of the community to make that *change, improvement*), and that neither people in low places nor in high places can be exempt from its operation, few persons are now so blind as not clearly to perceive. The spirit is one which is capable of being guided to the best and the wisest ends, but, thwarted and opposed, may prove as destructive as it might have been rendered useful and beneficial. An awful responsibility, therefore, rests with those whose station and influence give them the means either of forwarding the career of improvement or of checking its progress and turning back its current. Fortunately, the events which have taken place in this country during the last five years, have not been without their effect upon the minds even of the most bigotted opponents of reformation. Their darkness has been enlightened,

their fears have been alarmed, and the "premonitory symptoms" of reform have induced them to contemplate measures, the consideration of which would, a few years since, have been rejected with scorn, and to adopt a course of proceeding which it is evident they would, if neglected, have been compelled to pursue.

When the tide of public opinion flows deep and strong it must, in the end, bear every one along its current. Some objects round which it sweeps have remarkable powers of resistance, but even they at length will yield. Amongst those objects, the ancient expounders of ancient laws have a *vis inertiae* not easily overcome; but the flood-tide of reform has shaken their firmness, and already they have begun to make preparations for yielding to and directing the current.

The judges have become reformers—reformers of those abuses which once formed part of our perfect system of law. Alterations, and some of them on a very extended scale, have been already made, and are yet making, under the immediate superintendence of the heads of the different courts. There is inherent in every court, by its original constitution, a power of regulating its own proceedings by rules laid down for that purpose, by the presiding judges. Nearly the whole of what is called the *practice* of the courts has originated in this manner, and has from time to time been altered or amended, as circumstances required, or as the wisdom, or sometimes the caprice, of those who presided over the courts dictated. Each tribunal possessing a supreme jurisdiction in this matter, framed for itself a sort of code of procedure, without reference to what had been established as the practice of the other courts, and the consequence was an incongruity in their modes of proceeding unfounded in principle, perplexing to the courts themselves, a fertile source of difficulties and errors, and highly injurious to the interests of justice. Until within the last few years no disposition was shown by the judges to put an end to these useless distinctions, by assimilating the practice of the different courts. On the contrary, their inclination seems to have been to regard with jealousy a reference to the practice of other courts, and to uphold their own as a proof of the independence of their jurisdiction. Latterly a more reasonable view of the question has prevailed, and the judges of all the courts have concurred in the propriety of abolishing the many arbitrary and useless distinctions which have rendered the practical part of the law so frequently the source of expence and delay. The subject, in the mean time did not escape the notice of the Common Law Commissioners, who, in their Third Report, strongly recommended a revision and assimilation of the practice of the different courts, and a consolidation of it, under the authority of parliament, if necessary.

Much, however, was capable of being effected by the judges themselves, under the authority which, as we have stated, they possess of regulating the practice by rule of court. This power was extended by the statute 1 William IV. c. 70, s. 11, which enabled the whole body of the judges of the superior courts of law, or any eight of them, of whom the two chief justices should form part, to make rules and regulations binding upon all the courts. Under the sanction of this statute the judges have promulgated two sets of rules, the first in Trinity Term, 1 William IV. and the second in Hilary Term, 2 William IV.

The rules of Trinity Term, 1 William IV., are chiefly directed to an improvement in the practice of the courts with regard to bail, and to a reduction and simplification of the forms of pleading in the more common actions. In actions of *indebitatus assumpsit* the old forms of declaring were of considerable length, and conveyed little or no information with regard to the real nature of the plaintiff's claim. To obviate these inconveniences, the judges directed the length of the counts to be retrenched, and, that no difficulty might arise, they added a schedule of forms and directions. As the declaration still failed to supply the information which a defendant has a right to expect, the judges ordered that in all cases of declarations in *indebitatus assumpsit* the plaintiff should accompany his declaration with full particulars of his demand. Other rules were made for the purpose of saving time and expence, such as that a party attending before a judge shall be entitled to his order, after serving two summonses on the party who neglects to appear; whereas it was before necessary that three summonses should be taken out. Upon the whole, no inconsiderable degree of useless expence has been saved to suitors by these rules, and especially by that part of them which shortens the pleadings.

The rules of Hilary Term, 2 William IV., commence with a recital that it is expedient that the practice of the Courts of King's Bench, Common Pleas, and Exchequer of Pleas, should, as far as possible, be rendered uniform. One hundred and ten rules follow, nearly the whole of which are directed to the object stated in the preamble. Some, however, there are, which *amend* the practice in all the courts, though these are comparatively few in number.

It must not be supposed that these rules, numerous as they are, form any thing like a revised practice. Of the different modes of proceeding before adopted in the different courts, the judges have selected that which seemed to them the least objectionable, but they can scarcely be said to have made an attempt to introduce an improved and simplified practice. That task, so strongly recommended by the Common Law Commissioners, still remains to be achieved. Much good might be effected by the adoption of their suggestions, upon which the judges have already occasionally

acted. We hope before long to see the *Code* of practice advised by them constructed with a due regard to arrangement, simplicity, and brevity.

While it was so desirable, even in the inferior points of *practice*, to render the proceedings of the courts uniform, it became of course an object of solicitude that the diversity in their *process* should be abolished. Until this was accomplished it is obvious that their proceedings could not be thoroughly assimilated. The judges appear to have been of opinion that their power over the machinery of the courts did not extend to so large an alteration as this, and accordingly a bill was introduced into parliament by the Lord Chief Justice to render uniform the process of all the courts. Of the details of this measure, which passed into a law in the course of the last session, we have already given an account.* In addition to the benefit of providing one uniform process for all the courts, this act has introduced some valuable improvements with regard to the practice relating to the service, &c. of process. The "warning to the defendant," directed to be indorsed on all writs of *capias*, ought to be imitated in other cases. Every writ should inform the party of the consequences he incurs by neglecting it.

The desire of uniformity appears not to be confined to an uniformity of process and of practice, but to be extending itself to an uniformity of decision. All the courts are now more anxious than they formerly were to render their judgments congruous and reconcilable. Occasionally they are still at variance. (See *Dillon v. Langley*, 2 Barn. and Adol. 131; *Carlisle v. Garland*, 7 Bingh. 298; *Balme v. Hutton*, 2 Crom. and Jerv. 19.) And it is much to be regretted that in such cases there is no mode of ascertaining the law, unless the litigant parties should choose to go to the expence of carrying the cause to a court of error.

A greater respect also seems to be paid to the many excellent authorities upon subjects of general law, which are to be derived from the jurisprudence of foreign nations. Nothing, we feel persuaded, would tend more happily to liberalize the practice of the law, to add riches to the learning and ornament to the forensic efforts of its professors, than a comprehensive inquiry into the systems of foreign jurisprudence, and an attentive study of their principal writers. In this the Americans decidedly surpass us.†

* *Ante*, p. 295.

† "There is a remarkable difference in the manner of treating judicial subjects between the foreign and the English jurists. The former, almost universally, discuss every subject with an elaborate, theoretical fulness and accuracy, and ascend to the elementary principles of each particular branch of the science. The latter, with few exceptions, write what they are pleased to call *practical* treatises, which contain little more than a collection of the principles laid down in the adjudged cases, with scarcely an attempt to illustrate them by any general reasoning, or even to follow them out into

The corporations still find favour in the eyes of the judges; and while Lord Tenterden presides in the King's Bench they will never want a friend. On all occasions where the rights of the larger body are in opposition to those of the select few, the inclination of the court is in favour of the latter. An attempt was made by some of the freemen of the Merchant Tailors' Company to obtain a mandamus for the purpose of inspecting the books of the company, on a suggestion of improper dealings with the funds of the corporation, &c. The court refused the application, *with costs*. (2 Barn. and Adol. 115.) The ground of this decision is stated by Lord Tenterden to be, that there is no instance of such an application as this having been granted. The cases in which the court has interfered are all alleged to have been where some suit or controversy was depending. His lordship added, at the conclusion of his judgment, "Nor can I see any good reason for allowing particular members of a body corporate to inspect every document belonging to such body. I am sure it would lead to great inconvenience, and to much expensive litigation." Inconvenience to whom? To those who profit by concealment. Litigation with whom? With those who infringe the law for their own benefit.

The advantage to be derived by the community from upholding the follies and abuses of corporations is pretty clearly manifested in another case, which occurred lately in the Court of King's Bench. (*Shaw, Chamberlain of London, v. Pope*, 2 Barn. and Adol. 465.) The questions raised were, whether the Common Council of London had the power of licensing the number of carts to be worked in the City; whether they could delegate this power; and whether the number licensed was a reasonable number. The Common Council in 1681 enacted, by a bye law, that 420 carts, and no more, should be licensed by the president and governors of Christ's Hospital; and the court held the bye law good, and that no inquiry could be made into the reasonableness of the number. It is singular that, while from the decisions of our courts of justice an appeal is in all cases given, the judgment of every close corporation in the country is to be conclusive. We trust that the time is not far distant when a diligent investigation will be made into the affairs of every corporation in the kingdom, and when it

collateral consequences. In short, these treatises are but little more than full Indexes to the Reports, arranged under appropriate heads; and the materials are often tied together by very slender threads of connexion. They are better adapted to those to whom the science is familiar, than to instruct others in its elements. It appears to me, that the union of the two plans would be a great improvement in our law treatises, and would afford no inconsiderable assistance to students in mastering the higher branches of their profession."—*Preface to "Commentaries on the Law of Bailments; with Illustrations from the Civil and the Foreign Law. By Joseph Story, LL.D. Done Professor of Law in Harvard University. Cambridge, U.S. 1832."* This work will add to the high reputation which its author has already acquired both in his own country and in England.

will not be necessary for a corporator to apply to the Court of King's Bench for a mandamus, before he can inspect the accounts of the body of which he is a member.

The "Magistrates' Cases" in the King's Bench are always worthy of study, and afford many valuable suggestions. From these decisions we may best learn the deficiencies of the law, and the necessity of applying to a higher source for relief. Hitherto the law has fenced round the magistracy with such protections, that it is almost impossible to obtain justice in those cases of oppression which too frequently occur. Something, it should be remembered, is due to the public, who may now almost be said to be without redress where their injuries proceed from those whose duty it is to distribute justice. It has long been the practice of our justices of the peace to shun that publicity which is one of the great safeguards of justice; and the decisions of the superior courts have too generally sanctioned this practice. A justice of the peace has a natural objection to hear any other voice than his own; and it now appears from a late decision (*Collier v. Hicks*, 2 Barn. and Adol. 663), that he has the power of preventing any one from acting as an advocate before him. In that case an attorney attended before certain magistrates, as the advocate of a party who had laid an information on a penal statute, and was turned out of their office for not desisting from doing his duty to his client. The Court of King's Bench held, that the magistrates were justified in this act, having a discretionary power to regulate the proceedings of their own courts; that they might decide who should appear as advocates, and whether, when the parties were before them, they would hear any one else. "Any person," said Lord Tenterden, "whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions and give advice; but no one can demand to take a part in the proceedings as an advocate, contrary to the regulations of the court as settled by the justices." We shall not stop to inquire into the soundness of this decision, but, if it be law, it is quite time for the legislature to interfere. Why is the court of a justice of the peace to be the only court in which a party may not have the benefit of an advocate's services? When the highest court in the kingdom dare not refuse to hear a man by his advocate, why should a justice of the peace possess such a power? Difficulties enough exist in the construction of acts of parliament, and in the application of law to facts, to render the assistance of an attorney or advocate essentially necessary in such inquiries. It is vain to say that "either of the parties may have a professional assistant to confer and consult with, but not to interfere in the course of the proceedings." Can a clever attorney transfuse his argument into the mind, or deliver it by the mouth, of a clod-

hopping ploughman brought up for poaching, or of a weather-beaten sailor accused of smuggling?

"But," says the Chief Justice, "if the informer may, as a matter of right, demand that a professional advocate shall be heard for him, though he himself be present, the accused must have the same right. The consequence would be, that the parties would, in most cases, be put to a heavy and grievous expence. My own opinion is, that, in general, the ends of justice will be sufficiently well attained in these summary proceedings, by hearing only the parties themselves, and their evidence, without that nicety of discussion and subtlety of argument, which are likely to be introduced by persons more accustomed to legal questions."

It would no doubt prevent "a heavy and grievous expence" if advocates were prohibited in other courts, but this has never been suggested as a reason for such a prohibition; and while the law remains as it does, a man's liberty or property too often depends upon "nicety of discussion and subtlety of argument."

The decisions upon the Poor Laws are as numerous as ever. When will this abuse cease? The commissioners for inquiring into the state of these laws will do well to direct their especial attention to the enormous expence and vexation which arise from the litigation of these questions. The absurdity of rating only some particular species of property is manifested by the numerous cases which arise upon the subject of rateability. Some of the longest and most perplexing cases in the later reports are those respecting the rateability of canals and property of a similar nature. Why should the time of the Court of King's Bench be consumed in deciding whether an excavation in the earth, from which limestone is obtained, is a mine or not? If the machinery for raising other taxes resembled that by which the poor-tax is levied, and gave rise to an equal proportion of litigation, what would become of our courts? No reason exists why the poor rates might not be levied with all the facility of the government taxes. It is in vain that the Court of King's Bench discourages the stating of cases; while parishes have funds and lawyers, and while the Poor Laws remain as they are, the evil will continue.

What a picture of misery does the following marginal note of a case decided last year in the Court of King's Bench present! "Under the statute 59 Geo. III. c. 12, sec. 33, an Irish female pauper, having a bastard child born in a parish in England, and within the age of nurture, may, on becoming chargeable, be passed to Ireland, though the child cannot be sent with her, the act not authorising the removal of any settled person." (*Rex v. Benett*, 2 Barn. and Adol. 712.) "The statute," says the Chief Justice, "authorises and requires the justices to remove to Ireland the mother, who has not gained any settlement in England; but it

gives them no power to remove the child, which has acquired a settlement there by its birth. There may undoubtedly be hardship in removing the mother without the child, but that must be submitted to, for the act is imperative." This is a tolerably striking exemplification of the evils and follies of the *settlement* system, which would seem to have been expressly contrived for the sake of raising doubtful questions, and producing hardships "that must be submitted to."

It is a task not devoid of interest and utility to trace the decisions of the courts upon doubtful and unsettled questions. It would scarcely be consistent with our plan to enter into an examination of these cases, unless where they suggest some remarks upon the policy or expediency of the law as declared. Of this nature is the case of *Burroughs v. Clarke*, Dowl. P.R. 48. It has not yet been solemnly decided whether an arbitrator is entitled to recover the amount of his fees; but in that case Mr. Justice Taunton intimated an opinion that his services were purely honorary, and that he could not maintain an action for his fees. It is difficult to know upon what principle this opinion can be supported. Great injustice has been frequently caused by the rule that physicians cannot sue for their fees; and we do not see why it should be extended to another class of persons. The services of an arbitrator merit reward as much as those of any other person who bestows his "work and labour;" and if he is refused the protection of the laws, he will but too probably be driven to unworthy means of protecting himself. The judges are secure of their salaries, and would not be very willing to have their services declared honorary; and yet what are they in fact but arbitrators between plaintiffs and defendants?

The case of *Churcher v. Stringer*, 2 Barn. and Adol. 777, in which it was held that though interest is recoverable in an action on an award directing the payment of money at a certain time; yet that the principal only can be had upon motion for an attachment, leads to a consideration of the rule laid down by the courts of law on the subject of interest. That rule is decidedly too narrow, and is, we doubt not, the cause of many vexatious defences. Unless interest is payable, either by express stipulation or by the usage of trade, or unless the action is brought on certain mercantile instruments, the courts in general refuse to give interest. Nothing can be more unjust than this. Where the sum is large, it is well worth the defendant's while to protract the judgment by every mode of delay and opposition in his power; the amount of interest gained being much greater than the amount of costs incurred. When money is detained from the rightful owner, why should not the party be compelled in every case to pay the interest which he has made, or at all events might have made,

by the use of it? The Common Law Commissioners propose (4th Report, p. 33) "that interest shall be recoverable on all debts, from the commencement of the action down to the time of execution;" but why not also from the time of the debt becoming due?

Great benefit has been derived to the suitors and practisers in the King's Bench, from the arrangement by which one of the judges sits in the bail court for the dispatch of business of minor importance. Much delay, expence, and inconvenience, have been prevented by this practice. It is greatly to be regretted that the same principle which dictated this improvement has not been carried farther, and that such a division of labour has not been made as would secure greater order and celerity in dispatching the business of the court. At present, all kinds of business are mingled together, and not even the most constant attendant upon the court can say with certainty what particular matters it will proceed upon next. The French contrive to facilitate business by dividing their courts into *chambers*, and our own late change is in the nature of that arrangement. Surely some method might be devised of proceeding with such a degree of order and regularity, as to prevent persons whose duty or whose interests compel them to attend the court, from wasting their time there day after day, week after week, and sometimes term after term, in the vain hope of their business coming on.

Before closing our review of legal proceedings, we must not omit to notice the attempts which have been made by some of the judges on their circuits, to revive the barbarous and disgusting practice of *gibbetting*. The Anatomy Act having put an end to the *dissection* of murderers, gives the judges the power of ordering the body of the malefactor to be buried within the walls of the prison, or of directing it to be gibbeted, as might have been done before. It would not have been unreasonable to expect that, as the former power was given in lieu of the dissection, the judges would have acted upon it in all cases, and would not have recurred to the exploded custom of exposing the decaying remains of the criminal—an abominable and indecent nuisance to the whole neighbourhood. In one case, however, a murderer has been hung in chains, in which we suppose he is still swinging, to the opprobrium and disgrace of our institutions. In another instance, a similar spectacle was exhibited, until, in consequence of the just complaints of the persons residing in the neighbourhood, it was removed. The Anatomy Act will probably require revision; and we recommend this portion of it to the attention of a reformed parliament.

ART. X.—PARLIAMENTARY PROCEEDINGS.

Reforms in the Court of Chancery, &c.

On the 15th of August the Lord Chancellor entered into the following details respecting the proposed reforms of the Court of Chancery, the present state of the Court of Review, &c.

“The plan which I have now to detail will, in the first place, provide for the abolition of the Report Office; by which a considerable saving will be effected. In the next place, it will provide for the regulation and change of the Registrar’s Office; and in this department also a considerable saving will take place. My measure will then provide for changes in that great and most important department of the Court of Chancery—the Master’s Office, to which I have on so many former occasions directed the attention of the house. I consider the saving which will be effected by these changes as the least important result which may be anticipated from them. It is right, however, that I should state what the amount of that saving will be. By the abolition of the Report Office, there will be a reduction of 4,000*l.*; by the changes in the Registrar’s Office a saving of 14,000*l.*; and by the alterations in the Master’s Office a reduction of 13,000*l.*; producing a total saving of 31,000*l.* a year. By my plan, the worst branch of the system in the master’s department, which pays the master by fees on work done, will be entirely abolished; I mean the copy-money, which gives an interest to those persons belonging to the department to increase unduly, and I may say vexatiously, the expence of the suitors; the expence being increased in an infinitely greater proportion than the sums actually raised by this bad mode of paying judicial persons. I also propose to abolish altogether that still worse system of abuse, grafted on the former bad one,—I mean the payment of gratuities, the legality of which is only unquestionable because it has grown into a habit, which seems to have become permanent in that office. These changes will be important, considered with reference to economy, but incalculably more so when viewed as improvements in the administration of justice in this particular department. The master will, in future, be paid by a salary instead of fees. I have abstained from dealing with the Six Clerks’ department, and that of the Subpoena Office, by the present measure. Those departments, together with one or two other branches of the system, will be more conveniently introduced into one or two other measures, which will be rendered necessary by the act which has this day received the royal assent. In addition to what I have already stated, I shall feel it my duty to submit to parliament an important proposition, which, I trust, will be carried into effect,—I mean the constitution of a Court of Appeal in Chancery. I propose that this court shall be constituted of the heads of the equity jurisdiction in this country. This will be a great improvement upon the present system, by which a single head of a branch of equity constitutes a court of appeal from another branch. In addition

to the three heads of the equity courts, I will place in the Court of Appeal the Chief Baron of the Court of Exchequer. The judge whose decision is appealed against will, during the hearing of the case affecting his judgment, be excluded from this court. The appeal to this court will not be peremptory, but by way of election; the suitor may either come to the high court of parliament, or to the Court of Appeal; but it is part of my plan, that from that court an appeal shall not come to parliament in the last resort, unless there should exist a diversity of opinion amongst the judges. I likewise mean to add a provision, which I cannot help feeling to be of eminent importance, not only to the administration of justice, but to the proceedings of this house in the appellate jurisdiction. I mean to propose that your lordships shall have the power of calling on the judges in equity, as you now call on the judges in law, for the purpose of helping us to our decision in cases of appeal. I am perfectly aware, that if this proposal were to stop here, though a great improvement would be made, it would be felt that enough would not have been done; for it is my fixed and deliberate opinion, by which I am desirous of being understood to abide firmly—in spite of objections from quarters which are entitled to great respect, to which I understand that opinion has been exposed—that a very great change indeed is absolutely necessary in the constitution of the high office which I undeservedly have the honour to fill. I think that we cannot much longer remain in this country with that great—I will not say that gross and grievous, but only with that great, signal, and striking anomaly, that the highest judge in civil matters under the Crown is a minister of the Crown, and is removable at the pleasure of the Crown,—that to him should be intrusted, sitting alone and without control, the disposal of property of an immense amount, and of rights and interests still more dear to the parties than any rights of property, however important; he all this while being removable at the pleasure of the Crown, and also, whether he will or not, a political character as well as a judicial one. What then, it will be asked, is to be done with this high office and this great public functionary? I propose merely to separate the great branch of the Lord Chancellor's judicial functions—I mean that branch in which he sits and acts as a judge alone,—from his political functions, and from the functions which he discharges as Speaker of this house, and from his function of adviser of the Crown, and also from that other function incident to the Speakership of this house—I mean the judicial function, not exercised by the Lord Chancellor alone, but in conjunction with, and, if need be, under the control and superintendence of coadjutors. If these functions be no longer united,—if the Lord Chancellor shall sit in this house under precisely the same circumstances as the other judges, and in the Privy Council also,—when that important branch of jurisdiction shall be remodelled by parliament, as by an act passed this session it is pledged to be, so as to be rendered a useful and efficient court,—the great anomaly of which I complain will be removed, without any increase of patronage, and without a single shilling of additional burden to the public; for my opinion is, that the provision which has been made by parliament for the sustentation of the office of Keeper of the Great Seal is abundantly sufficient, if well applied, to maintain in due dignity the Lord Chancellor,

His lordship then stated several facts in illustration of the working of the new system, from which it appeared that several large sums of money due to bankrupts' estates had been collected by the diligence of the official assignees.

The office of Registrar of Affidavits having become vacant by the death of Mr. Scott, and it being necessary that some one should be appointed to fulfil the duties of the office until other provision should be made, Mr. James Brougham, the brother of the Chancellor, consented to become the *locum tenens*. This appointment occasioned some discussion in the House of Commons, originating with Sir E. Sugden, whose speech was noticed by the Chancellor on the following night with much severity. The place of Registrar of Affidavits was one which, in common with several others connected with the Court of Chancery, Lord Brougham had expressed his determination to abolish, as useless burthens upon the suitors; and accordingly on the 2d of August his lordship brought in a bill for the abolition of these sinecure offices, viz. the Clerk of the Hanaper, the Clerk of the Subpoena Office, the Registrar of Affidavits, the Clerk of the 'Crown in Chancery, the Clerk of the Patents, and the Clerk of the Custos. These offices, the duties of which are for the most part performed by deputy, it had been intended to abolish by the bills now in preparation for the reform of the Court of Chancery; but, in consequence of the delay which had occurred in bringing forward those bills, the Chancellor considered it advisable to introduce the present measure. The bill does not, of course, touch the interests of the present incumbents. The principle of the measure was stated by Lord Brougham to be, that these appointments were an improper mode of remunerating the Chancellor.

No opposition was offered to the bill in this stage; the Duke of Wellington merely suggesting, that it would with more propriety form part of the general measure which the Chancellor intended to introduce in the course of next session.

An amendment was made by the Chancellor on the report, to include the several other offices recommended by the Finance Committee of 1798 to be abolished.

On the third reading of the bill (Aug. 7th) a debate of some interest ensued. Lord Wynford objected to the measure, unaccompanied as it was by any bill providing for the execution of the duties of the abolished offices; he also urged that all the sinecure offices in the Court of Chancery were not got rid of by it. Lord Eldon opposed the bill on similar grounds, and defended himself and his predecessors from the charge of having neglected the reformation of the court. He also made some inquiries respecting the Chancery Commission, the members of which, he stated, had

given their services gratuitously. The bill then passed the House of Lords.

Chancellor's Salary.

On the 2d of August a bill was introduced by Lord Althorp for fixing the salary of the Lord Chancellor. The sum proposed is 10,000*l.* to his lordship as Chancellor, and 4,000*l.* as Speaker of the House of Lords. The retiring pension is not to be settled until after the abolition of the sinecure offices in the Court of Chancery. On the introduction of the bill, objections were made by Mr. Hume both to the amount of the salary and the fund out of which it was to be paid; and, upon its going into committee (8th of August), it was opposed by Mr. Sadler. The Chancellor of the Exchequer defended the measure on the ground that it was, in fact, a reduction of the Chancellor's salary as compared with former periods; stating, that in one year the office was worth 22,000*l.* to Lord Eldon.

In the Chancery Sinecures' Bill a clause was introduced by Lord Althorp (9th of August), which fixed the retiring salary of the Chancellor at 5,000*l.*

On the bill being brought up to the Lords, the Chancellor stated that the assertion of the Court of Review having diminished the quantity of business in his court was unfounded; though it might have affected the Vice-Chancellor's. He added, that for the five months he held the Great Seal previously to the establishment of the Court of Review, the bankruptcy business had not occupied him for twenty days. He stated that the arrears now existing in his court, which were inconsiderable, had been occasioned by a great accession of business there having been between 1,400 and 1,500 bills filed in the course of last year.

The bill subsequently passed.

Appellate Jurisdiction of the Ecclesiastical Courts.

On the 5th of July the Lord Chancellor brought in a bill for transferring the powers of the High Court of Delegates in ecclesiastical and maritime causes to his Majesty in Council.

The objections which have led to this measure are by his lordship stated to arise from the peculiar construction of the Court of Delegates, consisting of three or four common law judges, and four or five civilians. The Privy Council is to be assembled at stated seasons for the dispatch of the additional business thus thrown upon it. The practice of issuing Commissions of Review will of course fall to the ground. This measure is founded upon the recommendations of the Ecclesiastical Commissioners.

On the third reading of the bill (12th of July) a short debate

took place; in the course of which Lord Wynford expressed his approbation of the measure, and recommended the introduction of the trial by jury in ecclesiastical cases. He adverted, also, to the imperfect remedy now existing in the case of misconduct of clergymen.

Forgery Bill.

This bill, for abolishing the punishment of death for forgery, was read a second time on the 29th of June, and on the 31st of July it passed the House of Commons, after a debate of some length. The arguments on both sides of this question have been so recently and so fully given to the public, that it is unnecessary to detail them again. The Attorney General placed the question in its true light, by contending that the punishment of death was less efficacious than a proper secondary punishment. In illustration of this point he related the following incident: The servant of Mr. F. Pollock robbed his master of two hundred pounds worth of old gold and silver, and to this crime he added the base contrivance of endeavouring to fix suspicion on some glaziers, workmen who had been employed on the premises, by making marks along the passage through which they went, and dropping one or two sovereigns in the neighbourhood. This servant was tried for the offence; the facts against him were perfectly clear; but Mr. Baron Bolland suggested to the jury that as this was a capital offence, there might be just room for a bare doubt whether the prisoner had at any one time stolen five pounds' worth of the property, that fact being necessary to establish the capital part of the charge. On this the jury, without the slightest foundation in evidence, acquitted the man of the capital offence; and, what is still more extraordinary, the prisoner, instead of rejoicing at the verdict, felt annoyed, under the notion that it had taken from him his chance of entire escape, expressing himself in terms like these:—"I wish the old fellow had not talked about the five pounds, for I should have liked to have a run for life or liberty." Sir Charles Wetherell opposed the bill with his usual amusing violence, attacking "the sickly philanthropists and their insufferable insensibility." The learned member declared that "he could not pull out of his pocket a lachrymatory for a villain," and stated his belief "that that was a false, wicked, philanthropical, theoretical sect, that could only sympathise with the enormities of crime." Sir Edward Sugden, while he offered no opposition to the bill, prophesied many evils from its operation. The Chancellor of the Exchequer and Mr. Sadler supported the bill. "For myself," said Mr. Sadler, "I have never prosecuted a person for forgery, although it has been committed on me more than once.

Without claiming for myself any peculiarly humane feeling, I must say, that I shall never forget the anguish of mind with which I received the intelligence that an application I had made in behalf of a person from whose forgery I had suffered could not be attended to." Mr. Poulett Thompson and the Lord Advocate also spoke in favour of the bill.

On the 10th of August the second reading of the bill in the Lords was moved by the Chancellor, but no debate ensued.

Upon going into committee, on the 13th of August, a considerable debate took place. Lord Wynford, after stating that he should not oppose the bill, introduced an amendment, for the purpose of retaining the capital punishment in case of forgery of wills, founding his amendment on the destructive consequences of such an offence. Lord Lansdown thought that the forgery of a power of attorney relative to the public funds might also be excepted from the act, and it was accordingly included by Lord Wynford in his amendment. The Chancellor and Lord Holland opposed the amendment. "I cannot feel," said the latter, "that the heinousness of the particular description of crime to which the proposed amendment refers, suggests the least reason for departing from the principle upon which we have hitherto proceeded. If that principle be not a true one, we are legislating altogether in a wrong direction; if it be true that the punishment of death does operate to deter men from the commission of crime such as this, I say retain the punishment in order to prevent the offence. But if, on the other hand, it be true, that of all punishments that man can invent, that of death is the one which prosecutors, witnesses, judges, governments, which, in short, mankind, by a law written in their own hearts, are most unwilling to inflict, let us wipe it from our statute book." Lord Grey supported the amendment, on the ground that it was proper that the experiment should be tried.

On bringing up the Report (14th of August) the Chancellor re-stated his objections, and the Bishop of Hereford expressed his repugnance to the amendment.

The Lords' amendments were taken into consideration in the House of Commons on the 15th of August. The Chancellor of the Exchequer, after stating that he could have wished to see the punishment of death for forgery abolished altogether, thought it prudent, under the circumstances, to accede to the amendments. Sir E. Sugden concurred in the amendments; but Mr. Warburton, Mr. Hume, Mr. Wilks, and Mr. Hunt, expressed their regret that the bill had been altered. The amendments were then agreed to, and the bill has since received the royal assent.

Privy Council.

In the course of a debate on the 16th of August relative to the case of a native of India, some observations were made on the constitution and practice of this court. Mr. Hume remarked that some change had at length become necessary, the expences of a suit there amounting to an absolute denial of justice, and that the Court of Chancery itself did not require more correction. Sir Charles Forbes also animadverted very strongly on the decisions of that court.

Trial by Jury.

The question of introducing the trial by jury into New South Wales was brought before parliament on the 28th June by Mr. H. L. Bulwer, on which occasion Lord Howick stated that directions had been given by government that from the beginning of next year the jury system should be acted upon in all criminal cases in that colony.

The India Juries Bill has passed amongst the last acts of the session. The object of this measure is to authorise the appointment, by the local governments of the presidencies, of persons, not being British-born subjects, to be justices of the peace, under such regulations as exist there by law, and to remove the disqualification imposed on natives by the Indian Jury Bill of 1826, which prohibits any but Christians from sitting upon the trial of a Christian on petty juries, and all natives whatever from sitting on grand juries.

Registration Bill.

The committee have made their report upon this bill in favour of a general register, but have, at the same time, recommended some alterations in the bill before the house. Mr. Campbell, on the 16th of July, stated his intention not to proceed with the measure during the present session, but to move that the bill be read a second time, *pro formâ*, and that it be committed, so that the amendments may be introduced, and the bill be reprinted.

Privileges of Parliament Bill.

After considerable discussion, this bill went into committee on the 27th of June; but, on the 16th of July, Mr. Baring announced his intention, in consequence of the state of the public business, of giving it up for the present session.

Poor Laws.

The following statement was made by the Lord Chancellor with regard to the progress of the Commissioners for inquiring into the state of the Poor Laws :—

“I can now inform the noble lord that the Commissioners have been, since their appointment, most laboriously employed in prosecuting the inquiry committed to them; and I hold the community deeply indebted to them for the highly important and useful labours, which have extended not only to the metropolis, but have been employed in carrying on a correspondence with various parts of the country; and when local commissioners shall have been appointed upon their recommendation, the most important results may be expected: for I can speak from my own knowledge as to the valuable information which has resulted from the inquiry as far as it has gone. I have little doubt that, by the next session, a complete and most valuable stock of information on the general operation of the Poor Laws will be obtained; and I speak with confidence on this point, from the attention and consideration which I have myself bestowed on the general subject entrusted to their inquiry.”

His lordship then mentioned the circumstance of one of the Commissioners having given up his practice, in order to give his undivided attention to the subject.

Secondary Punishments.

In moving for certain returns relative to second convictions for larceny, Lord Wynford took an opportunity, on the 2d of August, of noticing the expressions attributed to some of the judges, upon the operation of the clause introduced by him into Mr. Ewart's bill, making the punishment, in all cases, transportation for life. He said that the learned person who made this observation, must have known that the crown might interpose its mercy, and that a proper representation would always receive attention. Lord Grey also defended the amendment on the same grounds.

The Report of the Committee on the subject of Secondary Punishments has been presented.*

Prescription.

The bill “for shortening the time of prescription in certain cases” has passed into a law (2 and 3 Wm. IV. c. 71.) By this act claims to rights of common and other profits, *a prendre*, are not to be defeated after thirty years' enjoyment, by showing the commencement of the right within fine of memory; and, after

* We shall notice this Report in our next number.

sixty years, such right is to become absolute and indefeasible. With regard to rights of way, and other easements, the respective periods are to be twenty and forty years; and claims to the use of light are to become indefeasible in twenty years. In the subsequent sections of the act provision is made for the alterations in pleadings which will be caused by these changes.

Inns of Court.

On the 17th of July, Mr. Harvey brought forward a motion, which he stated it was not the intention of government to oppose, "that an humble address be presented to his Majesty, that he would be graciously pleased to direct the Commissioners appointed to inquire into the state and practice of the law, to examine into the course of proceedings before the benchers and visitors of Lincoln's Inn, Inner Temple, Middle Temple, and Gray's Inn, upon the application of persons seeking to become students thereof, or to be called to the bar." The Attorney General being called upon by Sir C. Wetherell, stated his approbation of the motion, and his opinion that many objections exist to the present mode of calling to the bar. He added, that it was the opinion also of many of the leading members of the bar, that the power of excluding persons from becoming members of an inn of court is one which, however judiciously exercised by the benchers, ought not to be entrusted to them. Lord Althorp supported the view taken by the Attorney General, and intimated an opinion that a more strict examination ought to take place as to the qualification of persons to be called to the bar. Sir Francis Burdett argued, that the conduct of these self-elected bodies was altogether illegal and unconstitutional, and adverted to the case of Horne Tooke. The motion was likewise supported by Mr. Cutlar Fergusson, Colonel Evans, and Mr. Hunt. Mr. Campbell stated that the grievance was too obvious to require any preliminary inquiry. The motion was opposed by Sir C. Wetherell and Mr. Knight, but carried on a division of 26 to 2.

ART. XI.—DOCUMENTS, INTELLIGENCE, &c.

Seventh Annual Report of the Society for the Reformation of Juvenile Delinquents in the City of New York.—1832.

In obedience to the act incorporating the Society for the Reformation of Juvenile Delinquents in the city and state of New York, the managers respectfully report:—That

There have been received into the House of Refuge during the past year		Boys	101
		Girls	24
			<hr/> 125
Of those who had been previously indentured, there have been returned		Boys	11
		Girls	2
			<hr/> 13
There have been also returned two boys who had escaped			2
There were in the house, at the date of the last annual report		Boys	141
		Girls	40
			<hr/> 181
Thus making, of all the children under the care of the society during the past year, the total of			321
Of these there have been indentured—			<hr/>
		Boys	102
		Girls	20
			<hr/> 122
Returned to friends—			
		Boys	12
		Girls	2
			<hr/> 14
Of age		One Girl	1
Escaped during the year		Boys	2
And there are now remaining in the house—			
		Boys	139
		Girls	43
			<hr/> 182
			<hr/> 321
Those received into the house were committed by the following authorities, viz.:—			
Boys:—By the Commissioners of the Alms-House		6	
Police of the City and County of N.Y.		63	
Special Sessions of ditto		6	
General Sessions of ditto		7	
Albany County Sessions		7	
King's County ditto		4	
Orange County ditto		3	
Rensselaer County ditto		1	
Monroe County ditto		2	
Ulster County ditto		1	
Oneida County ditto		1	
			<hr/> 101
Girls:—By the Commissioners of the Alms-House		5	
Police of New York County		18	
Special Sessions of ditto		1	
			<hr/> 24

Of the above numbers, there are—

Of American Parentage	61
Of Irish ditto	32
Of English ditto	15
Of German ditto	2
Of Scotch ditto	3
Of French ditto	8
Of Welsh ditto	3
Of unknown ditto	1
	—125

Those committed were of the following ages, viz.—

One of	5 years
One of	7
Five of	8
Five of	9
Six of	10
Seven of	11
Thirteen of	12
Eighteen of	13
Twenty-one of	14
Twenty-nine of	15
Twelve of	16
Five of	17
One of	18
One of	19

Total, one hundred and twenty-five.

There have been indentured during the year—

Boys :—To Farmers	35
South-Sea Whale Fishery, and other	
Sea Service	24
Shoe Makers	8
Blacksmiths	9
Tailors	2
House Carpenters	4
Ship Carpenters	3
Mason	1
Chair Makers	4
Tanners and Curriers	4
Baker	1
Carriage Makers	2
Hatter	1
Printer	1
Cloth Manufacturers	2
Cabinet Maker	1
	—102
Girls :—Housewifery	20
	—122

It will be observed in the foregoing tables, that, in a few instances,

children have been returned to their friends. This course has never been pursued, except under peculiar circumstances, which appeared to the managers not only to justify the proceeding, but to render it more advisable than the ordinary mode of indenturing apprentices. It was done, for example, in one instance, in which a child's parents, of respectable characters, had removed from the city to the country, and settled on a farm with a view to permanent agricultural pursuits, and offered perhaps the most advantageous apprenticeship which it was in the power of the managers to procure. In another instance, it was satisfactorily proved that the charge on which a boy had been sent to the Refuge was utterly unfounded, and the magistrates before whom he had been arraigned united in a certificate of his innocence. One little boy of very tender years, afflicted by a disease which ultimately terminated in his death, was surrendered, temporarily, to the care of an anxious mother. This departure from the usual disposition of the children has been allowed only when, on the best consideration, it seems preferable to any other course which could be pursued in relation to the child.

In *indenturing* the children committed to the managers' care, the most patient consideration is bestowed upon the selection of suitable occupations and places of abode, and every means within the power of the managers is diligently employed in the investigation of the character and circumstances of the person to whom an apprentice is indentured. The wishes of the child are carefully attended to, and an apprenticeship rarely takes place without the perfect accordance of his feelings. The execution of this important branch of the directors' duties involves in it perhaps the greatest degree of labour attending the management of the institution. Three of the managers, forming what is termed the *indenturing committee*, are specially charged with this employment. This committee meets always once, and frequently twice or three times a-week at the House of Refuge, often spending the greater part of a day in a meeting. Before this committee are laid the applications for apprentices; and all such certificates and evidence as it is possible to obtain of the character and circumstances of the applicants, are required and minutely examined; and as far as a personal investigation into every circumstance connected with the proposed indenture is within their power, it is industriously prosecuted by the members of the committee in the recess of their meeting.

It is felt by the managers to be due to the gentlemen to whom this important department of the management of the institution has been confided, to bestow a farther remark upon the additional labours with which they charge themselves. The supervision of this committee over the children of the Refuge ceases not with the departure of the latter from our walls. As far as is practicable, a tutelary observation is still maintained over the situation of the youth who have been indentured, and particularly over the treatment which they receive from their employers. And in some instances, where an interference on behalf of the apprentice was demanded, as where it was discovered that he had been cruelly treated, or that his morals had been neglected, or that the character of his master was different from what it had been represented, and likely to affect injuriously the welfare of the indentured boy, a

change was effected by the exertions of the committee, and the child transferred to a more humane and advantageous situation.

The discipline and government of the children within the House of Refuge are enforced and improved by the collateral labours of the indenturing committee. In guiding their judgments in the selection of apprentices, the members of the committee render themselves minutely acquainted with the individual character and circumstances of the different children, and are enabled to assist the officers of the institution by their counsel, in the details of their treatment of the inmates of the house. The children are separately called before them, and examined in private; their good or bad standing is inquired into, and its causes ascertained; those who are subject to censure are exhorted, advised, and reproved, while the meritorious are commended and encouraged to persevere in the performance of their duties; and a regular classification of all the persons in the house is made, with a view to the relative standing of each individual, and the distribution of rewards or the application of punishments. The effect of these services is perceived by the managers on the whole operation of the institution, and draws from them this acknowledgment to the gentlemen whose gratuitous labours, at the cost of so much time and active exertion, have been faithfully and unremittedly performed.

The tables above given exhibit the different occupations selected by the managers for the apprentices whom they have indentured.

One of the occupations, which may strike the observer, on the first consideration, as the most hazardous and doubtful in its effects on youth—we allude to that of a seaman—has been proved by experience to be among the most benign and favourable. The young men (for those indentured as seamen were the oldest boys in the establishment) shipped as sailors were mostly sent on the South-Sea whaling voyages, of which the results appear to have been favourable to their morals, as well as to their pecuniary interests. The superintendent, in a letter to the managers, of which we give an extract, has pointed out this class of our boys as deserving of particular notice. "I shall," he remarks, "feel much gratified in speaking of the happy results of sending our boys on the long South-Sea whaling voyages. A large number have returned this season, and almost uniformly come to see us; dressed without exception like gentlemen; some with watches in their pockets, the fruits of their own industry. The greater part of them return to the same employ again. Many are shipped as boat-steerers, and one, I am informed, has been made second mate of one of the whaling ships."

During the past year, the inmates of the House of Refuge have been engaged in the following mechanical employments:—in the manufacture of brushes for clothes, shoes, hats, &c.; in cabinet work, making bedsteads, pine and cherry tables, wash-stands, &c.; in the manufacture of bead ear-ring, safety-chains, and necklaces; and, principally, in the manufacture of seats for chairs and settees. The amount of work performed by the boys in these branches will appear in the statements of the superintendent annexed to this report. Shoes for the use of all the children are made within the walls, as are also clothes for the use of the whole establishment. The cooking of the male and female houses is done exclusively by the inmates of the respective houses; and the washing for all

the children is done by the girls. By a recent arrangement, fifteen of the girls are now employed by a tailor in making clothes, on wages of a shilling each per day. And in the above-mentioned trades (except the making of shoes and clothes,) the boys are, in like manner, hired by contractors at wages of 12 1-2 each per day. This method has been adopted by the managers, after a trial of the different dispositions of the children, as on the whole the most advantageous. It is free from the losses and risks attendant on the carrying on of trades for the account of the society, and enables the officers of the institution to bestow more time and greater attention on the moral government of the children, who remain, by the terms of the contracts, exclusively under the discipline and control of the society.

It is with great satisfaction that the managers advert to the health of the Refuge. During the past year not a single death has occurred among the children within the house, nor scarcely a case of serious disease; and at the present moment there is not in our hospital a child whose sickness excites the least apprehension. In a season like the present, of unusual sickness in the city of New York, the healthy state of the House of Refuge cannot but be considered as a convincing proof of the propriety of the regimen and treatment observed in it. The managers have, however, some time during the late year, felt much solicitude at the existence in the Refuge of a disease of the eyes, which at one period assumed an alarming aspect. At the commencement of 1830, about thirty boys were afflicted with this ophthalmia.* The attention of the managers, and of the physicians of the society, was particularly turned to it, and a system of sanitary regulations, under the advice of the latter, adopted, which has been followed by a reduction of the number of those affected by the disease to four, all of whom appear to be on the recovery. In no instance has the eyesight of an individual been lost, and the managers now confidently anticipate the speedy extirpation of this disorder among the children.

The judicious management and skill of Dr. Power, the resident physician of the House of Refuge, in relation to this disease, have been felt and appreciated by the managers; and they avail themselves also of this opportunity to renew to Doctors Stearns and Carter their grateful acknowledgments for their gratuitous services, rendered in the past, as during the preceding year, with indefatigable and persevering attention.

The nature of the *government* and *discipline* exercised over the children, will perhaps be better illustrated by a summary account of the routine of a single day in the House of Refuge, than by any other description which it is in the power of the managers to give.

At sun-rise of every day in the year, a bell rings to rouse the children. In fifteen minutes the cells are opened, and each of the children, having made up his own bed, and arranged his little apartment, steps forth at a signal into the hall. They are then marched in order to the wash-room, where the utmost attention to personal cleanliness is required and enforced. From the wash-room they are called to parade in the open air (the

* As far as it could be traced, it was introduced into the house by three boys who had been subject to this distemper in the City Almshouse.

weather permitting), when they are ranged in ranks, and undergo a close and critical inspection as to cleanliness and dress. The parade finished, they are summoned to morning prayers. These various operations consume about a half-hour; and at half-past five o'clock, in the summer, the morning school commences. In school they remain till seven o'clock, when they are dismissed for a few minutes, and until the bell rings for breakfast, which consists, according to the dietary regulations of the managers, of bread, molasses, and rye coffee, occasionally varied by the substitution of Indian meal for bread, and milk for coffee. A half-hour is allowed for breakfast, at the expiration of which the signal for labour is given, and the children are conducted to their respective work-shops, to remain there until noon. By an allotment of tasks, however, these hours of labour are shortened to the industrious. The working day for this purpose is considered as commencing at one o'clock in the afternoon, when a certain task, proportional to his years and capacity, is assigned to each child, and if this task is performed before twelve o'clock at noon of the succeeding day, the child is rewarded by the allowance for his recreation of whatever time he thus gains before twelve and after eleven o'clock, until which hour all are kept in the work-shops. The benefit of this arrangement is sensibly perceived upon the spirits and industry of the boys, and there are few among them who do not thus gain, what all but the wilfully idle are able to gain, some extra time for their own amusements.

At twelve o'clock, a bell rings to call all from work, and one hour is allowed for washing (which is again scrupulously attended to) and dinner. The dinner, by the managers' regulations, consists, for five days in the week, of nutritious soups, meat, potatoes, and bread. On Fridays fish is substituted for soup and meat; and on Sunday a dinner of beef and a vegetable of superior quality to those of the other days is allowed. At one o'clock a signal is given for recommencing work, which continues till five in the afternoon, when the bell rings for the termination of the labour of the day. A half-hour is allowed for washing (which is once more enforced) and supper, consisting of mush and milk, molasses and rye coffee. At half-past five the children are conducted to their evening school, in which they are kept till eight o'clock. Evening prayers are now attended to by the superintendent, and the children, ranged in order, are then marched to the sleeping halls, where each takes possession of his separate apartment, and the cells are locked, and silence is enforced for the night.

The above is the history of six days of every week in this year, except that, during the short winter days, morning school is suspended, and the work-shops are closed at four o'clock in the afternoon. On Sundays, labour of course ceases, and, instead of the morning school, the time allotted on other days for this purpose is taken up in the classification of the children according to their conduct during the preceding week, and the distribution of badges of merit. Religious service is performed twice during the day in the chapel, in the presence of a committee of the managers, by the clergymen of the city in rotation. In the interval between the church services, a Sunday school is held for the children; and after the evening service they are allowed to walk about the grounds, under the observation of the officers, until eight o'clock.

The children have been instructed, during the past year, by the assistant superintendent of the respective houses, in reading, writing, and arithmetic. Their progress has been on the whole satisfactory; but the managers have it in contemplation to extend and improve the system of instruction. The duties of the assistant superintendent are necessarily varied and pressing, and it is deemed advisable to appoint a well qualified person to discharge the single duty of instructing and watching over and promoting the moral and religious improvement of the children.

The discipline exercised over the inmates of the House of Refuge is of a mild and simple character. The children are divided, with reference to their merit, into four classes, the most worthy being placed in class No. 1. Each wears on his arm a badge of the class to which he belongs. To a station in the third class is annexed a certain slight deprivation of play; and to the fourth class, which consists of the worst boys, who have been guilty of flagrant offences against the rules of the house, is attached, during the first week, the penalty of the third class, with an additional one, consisting of the deprivation of Sunday supper. A second week's continuance in the fourth class, which is the consequence of farther bad conduct during the first week, brings with it the additional punishment of confinement after evening service on Sunday. On the other hand, four weeks' maintenance of a station in class No. 1, which is the result of continued good conduct during this period, entitles a boy to a blue ribbon, and certain slight but highly appreciated privileges: four weeks of farther good conduct entitles the wearers of the blue ribbon to the higher honours of the red and blue:—and if after this he shall, without any special limitation of time, prove himself worthy of the confidence of the officers, he receives the highest reward of merit in the tri-colour badge.

This simple system of rewards and punishments, suffices, in the main, to preserve in contented and cheerful obedience the two hundred little beings confided to our care. Cases, however, do arise, which require severer punishments. Bold and daring attempts to escape, and rude and obstinate disobedience do occasionally occur, when corporal punishment—never however of a severe character—and solitary confinement—rarely of a protracted duration—are found indispensably necessary. The misconduct which renders necessary punishments of the last description, is almost invariably committed by those of the youth who are approaching the years of manhood. The experience of our institution fully confirms the common opinion, that the hope of a delinquent's reformation is inversely as his years; and that the benefit which an offender of mature age derives from the discipline of the Refuge, is greatly counterbalanced by the evil which he spreads around him. It must indeed be an obvious truth, that a youth of either sex, who has passed the years of childhood—who adds a thorough acquaintance with vice to the untutored passions of early life, and who has felt all the attractions, and but slightly the bitter consequences of guilt, is not included among those juvenile delinquents, whom, it was the design of this institution, to receive, and cherish, and reform. The means of coercion and government possessed by the House of Refuge were intended moreover for children, in the ordinary meaning of the term, and not for those who in bodily strength,

temper, fixed habits, determination of character, and every thing except the legal definition of infancy, are separated from this class. It will be remembered, by those who have attended to the history of the House of Refuge, that some years since a desperate plan of escape was formed and nearly executed, which cost the blood and almost the lives of several of the officers. This was the work of a boy of nineteen years of age. In the past year, several daring plans of escape, by violent means, have been detected among the older boys. It is of importance that these facts should be understood and appreciated by the community, as, by a late statute, emendatory of the act incorporating this society, every court in the state is empowered to send to the House of Refuge, such convicted children as shall be deemed by them to be proper objects. And under this authority, the managers are very frequently compelled to receive boys, sentenced hither by courts influenced by deceptive statements of the ages of the offenders, or by the suggestion, as they respectfully conceive, of ill-judging compassion, who would have been excluded by a due consideration of the nature and objects of this society.

A statement of the receipts and expenditures of the society during the past year, by Cornelius Dubois, Esq. the Treasurer of the Society, is annexed to this report.

Subjoined to this report will be also found a few histories of children who have heretofore been under our charge, and who were indentured under our supervision. The selection is made from a mass of cases, perhaps equally interesting, and could have been extended far beyond its present limits. In these short and simple annals, no attempt has been made by the managers to alter or suppress the language of the communications of the children whose cases are given, under the belief that their own artless, if imperfect narratives, are the best form in which their stories can be presented to the public eye. But in histories of these children, preceding their entrance into the House of Refuge, the managers have been compelled to throw a veil over many details, which would have heightened the contrast of the present situation of many of these little beings, snatched from the midst of vice of the deepest, and, in some instances, most unnatural depravity.

The managers invite attention to the annual report of the Ladies' Committee, of whose services to the institution—particularly the female department—it is difficult to speak in terms of adequate commendation and sufficiently grateful acknowledgment.

In closing this report, the managers have only to observe that they are aware of no circumstances in which this institution has failed to fulfil the wishes and hopes of its founders and patrons; and, on the contrary, they feel encouraged by every view of this society and its effects, to persevere in their direction of this noble attempt on the part of the community to stay the contagion of corrupting guilt, and to direct to paths of virtue and peace the footsteps of erring and deserted childhood.

The following letter from Paris gives some account of the present state of legal literature in France:—

“M. Dupin has, in the present year, published a fifth edition of

the *Profession d'Avocat*, the additions in which he describes in the following terms:—'1. In Roman law I have specified all the works published in Germany, in consequence of the discovery of Gaius; 2. Collections of Academical Dissertations; 3. Lists of the Treatises in the collections of Zilet, Otton, Meerman, Samuel Petit, &c.'

'In foreign law, all was before very imperfect. Camus had given but a slight sketch of the subject: nor has it now been attempted to complete so endless a task. But, in our present frequent intercourse with the rest of the world, especially with Europe and America, it is absolutely necessary to know what are the chief collections of law in every country, and what are the best works to be consulted in commercial questions, in descents, and on other heads which arise upon the residence of Frenchmen abroad. In order to improve this part of my book, I have not only examined the best catalogues, but I have also consulted learned men every where, and even the respective embassies, for the same purpose.

'In French law, numerous works have appeared since the last edition was published, in 1818; first, upon the codes generally; secondly, upon the forest laws in particular; and thirdly, upon administration, which, of late, has been much more studied than heretofore.

'I have been greatly indebted to M. Poncelet upon the head of Roman law; to M. Pardessus, upon that of commercial law; to M. Rossi for Swiss law; to the Swedish Ambassador for the law of Sweden; and I am bound especially to acknowledge the assistance which I have received from M. B. Warée,* the elder, the extent of whose bibliographical learning is great; and who has spared no pains in verifying dates, and in clearing up doubts upon disputed points.

'I have included in this work certain papers, before published separately, of a few books worthy of attention for their antiquity, or for their original character,' 2d vol. p. 5.

"At a time when the Record Commissioners are understood to be contemplating an inquiry into the early writers upon English jurisprudence, it is desirable that they should take advantage of the labours of M. Dupin, and extend the inquiry to the class of French writers mentioned in the last sentence of the foregoing extract. The following account of 'The Counsel of Pierre Defontaines to his friend and all mankind,' will be read with interest:—'The book was written in the year 1253. The author was Master of the Requests to St. Louis; and President Henault considers him to be the earliest of the French lawyers; which opinion is supported by a passage in the original prologue, 'Nus n'enprist onques mais devant moi ceste chose dont j'ai.' He complains, that the ancient usages which the Prud' hommes kept had lately been broken in upon by the 'baillis and prévôts,' who were more

* A French law bookseller.

disposed to exercise their own will and pleasure, than to observe the settled customs; and that by many persons submitting to their views, rather than adhering to the acts of their forefathers, the country had almost lost its ancient usages. From which, says Pierre Defontaines, it was the hardest thing in the world to be determined who should lose, and who gain a cause. The object of his work is to disentangle this confusion; and it is compiled from the practice of all the *lay* courts of the time.' 2 vol. p. 705.

"The 1st volume of M. Dupin's work contains numerous treatises, written by himself and by other celebrated lawyers, as introductions to every branch of jurisprudence; and as guides to the law student. The 2d volume is a Catalogue Raisonnée of 3,700 volumes of French law; and of the laws of all other nations, including Poland, Russia, and even China.

"The publication of law books is not in great activity at this moment in Paris. But the 8th edition, much improved, of the excellent Manuel de Droit Français, has been published in the present year, with the 15th volume of M. Duranton's Cour de Droit Français; a volume on the High Court of Appeal, by M. Godart Desaponay; the Code Penal progressif, by M. Adolphe Chauveau.

"There is about to be printed Une Traité des Privilèges et Hypothèques, par M. Troplong, Avocat General.

"An important report upon the Prisons of the United States of North America, by two Commissioners sent to that country lately, is on the eve of publication, with an 'Essay sur la Morale Statistique de la France,' by M. Guerry. And M. Dupin states in his Catalogue that a revision of the laws upon consuls is in progress; a subject which has been, however, less neglected in France than in England. In the last session of parliament Mr. Hume moved for papers on the subject of the English consulates connected with the Colonial Office. Mr. Hume will find the French publications on this jurisdiction worth his attention, in his further inquiries."

INDEX

TO VOLUMES I., II., AND III.

- Absentees*, mode of proceeding against absent persons by the American law, i. 439.
- Alfred*, his severity towards the judges, iii. 30.
- America*, see *United States*.
- Amusements*, public, laws relative to, i. 294.
- Animals*, on property in, iii. 403.
- Apothecaries*, laws affecting the practice of, i. 388.
- Appeals*, Mr. Cooper's observations on appeals to the House of Lords, ii. 102, 260, 262; to the Privy Council, 107; Courts of Appeal in India, iii. 165; system of, under the Bankruptcy Court act, 178; character of the House of Lords as a court of appeal, 179; account of the Court of Cassation, 202; new court of appeal in equity, suggested by Lord Brougham, 453; appeals from ecclesiastical courts, 457.
- Arbitration*, improvements in law of, suggested by Mr. Brougham, ii. 23; fees not recoverable by arbitrators, iii. 450.
- Arrest*, report of the Common Law Commissioners on the law of reviewed, iii. 368; arguments in favor of, 369; arguments against, 371; Serjeant Stephen's observations considered, 376.
- Assignees*, official, remarks on, iii. 183.
- Attachment for debt in America*, ii. 120.
- Austin, John*, his lectures on jurisprudence reviewed, iii. 105.
- Austria*, law relative to prescription in, ii. 394.
- Bacon, Lord*, his remarks on the uncertainty of the law, i. 409; a legal reformer, ii. 33; character of, and account of his malversations, iii. 381, cited, ii. 187, 198, 249, 368, 371; iii. 214, 215, 241.
- Bankrupt Laws*, consolidation of, i. 51; former state of the law, ib.; propriety of separating bankruptcy from the Chancellor's jurisdiction, 56; separate commissions unnecessary, ib.; compensation, 57; local tribunals for bankruptcy, 61; union of bankruptcy and insolvency jurisdictions, 62; mode of executing country commissions, 63; expenses of, 66; necessity of establishing permanent courts, 69; patronage, 70; points in the American bankrupt law, 430; Mr. Cooper's observations on state of, ii. 109; Bankruptcy Court bill passed, iii. 88; observations on the new Court of Bankruptcy, 171; propriety of uniting the jurisdiction in bankruptcy and insolvency, 174; returns relating to the Court of Bankruptcy, 309; changes projected in the Court of Review, 437.
- Baring, Mr. A.*, his bill relative to privilege of parliament, iii. 307, 442.
- Barrister*, the, his duty to himself, ii. 307; his duty to his client, iii. 94; his duty to the court, 213; his duties to his profession, 214; Mr. Harvey's motion as to calling to the bar, 441, 462; assistant barristers, system of, commended, ii. 423; Calcutta bar, iii. 163.
- Bavaria*, criminal code of, noticed, ii. 211; law of prescription in, 388.
- Beames, Mr.*, his observations on the jurisdiction of Chancery over infants, ii. 80; cited, ii. 71.
- Bell, Mr.*, a convert to registration, iii. 338.
- Bentham*, his Rationale of Judicial Evidence noticed, i. 326; ii. 25; his correspondence with Madison on codification, ii. 48; his opinion on plurality of judges, 94; Dr. Reddie's notice of, 212; his Rationale of Judicial Evidence referred to, iii. 1; his remarks on lawyers noticed, 28; cited, ii. 99, 111, 114, 203, 215, 275, 384.
- Bickersteth, Mr.*, his evidence before the registration committee, iii. 334, 340, 402.
- Bills of Exchange*, bill to regulate periods of payment of, i. 146.
- Birth* (see *Parochial Registration*), system of registration of, in France, ii. 39; in England, 41.
- Blackstone, Sir W.*, cited, ii. 277, 470; character of his Commentaries, iii. 106;

- examination of his doctrine as to property in game, iii. 413.
- Bracton*, cited, ii. 385.
- Brougham, Lord*, his speech on the state of the law, ii. 1; his Bankruptcy Court act considered, iii. 171; his progress in law reform, 187; his account of the proceedings of the Common Law Commissioners, 293; his speech on taking leave of the bar, May, 1832, 313; his projected reforms (1832), 436; his speech on law reforms (1832), 452.
- Campbell, Mr.*, bills brought in by him, as head of the Real Property Commission, iii. 86, 88; abstract of those bills, 262; recommends general registry of wills, 402.
- Capital Punishment*, see *Death*, *Punishment*.
- Cassation, Court of*, account of, iii. 202.
- Censorship*, of the drama, observations on, i. 172.
- Certainty*, Sir W. Scott's remarks on the Certainty of English Law reviewed, i. 406.
- Ceylon*, introduction of trial by jury at, i. 121.
- Chamberlain*, prohibition of plays by, i. 288.
- Chambers, Mr. Justice*, his opinion as to the legality of the regulation respecting liberty of the press in India, i. 88.
- Chambre des Pairs*, account of the, iii. 201.
- Chancellor*, propriety of taking away his jurisdiction in bankruptcy, i. 56; return of the amount of his profits, 321; observations on his jurisdiction over lunatics, 396; division of his duties suggested, ii. 108, 257; iii. 89, 453; whether a fit person to bring forward reforms of his court, iii. 79; propriety of separating his jurisdiction in bankruptcy, 175; bill for fixing his salary, 457.
- Chancery* (see *Equity*), arrears of business in, i. 105; bill for reforming the Court of, 139, 305; account of the early proceedings in, 327; Parkes's history of the Court of, 446; jurisdiction of, over children, ii. 66; Cooper's account of the Court of, reviewed, 81; account of bills filed in, 82; injunctions, 84; appeals, &c., ib.; observations on the new Chancery orders (1828), 137; Cooper's letters on, reviewed, 242; increase of business in, 246; his proposed reforms, 259; state of business in (Jan. 1829), 305; history of the reform of, iii. 56; account of the Chancery commission, 59; suggestions for the reform of, 83; Mr. Spence's observations on intended reforms, 298; bill to effectuate process of, 298; Lord Brougham's speech on Chancery reform (1832), 452; abolition of sinecure places in, 456; Chancellor's salary, 457.
- Church-rates*, ought not to be matter of spiritual cognizance, iii. 397.
- Church-seats*, ought to be matter of spiritual cognizance, iii. 398.
- Clarendon, Lord*, cited, iii. 36, 386.
- Clergy*, discipline of, properly matter of spiritual cognizance, iii. 398.
- Code Frederique*, nature of, ii. 207.
- Code Napoleon*, abolition of, in the Rhenish provinces, i. 246; imposed on Germany, ii. 183; Savigny's opinion of, 199; Dr. Reddie's observations on, 312; history of the French codes, 341; law of prescription in, 384.
- Codification*, Uniacke's letter to the Chancellor on a code of law, i. 19; projects for, in the United States, 437; in the state of South Carolina, ii. 47; on codification in the United States generally, 48; Bentham's correspondence with Madison on, ib.; report to the legislature of South Carolina on, 53; meaning of codification, 112; Mr. Humphreys's observations on, 126; Savigny's opinion on, 188; materials for the formation of a code of English law, 203; authorities for and against it in Germany, 204; in Russia, 210; Mr. J. J. Park's opinions on, 117; history of the French codes, 341; code of Louisiana, 438.
- Coining*, new act against, noticed, iii. 438.
- Coke, Sir E.*, character of, iii. 381; cited, ii. 372, 401; iii. 30, 31, 214, 217, 231, 259, 417.
- Colonies* (see *India*), history of the North American, i. 23; laws of the West India colonies, i. 421; administration of justice in the East Indies, ii. 225.
- Commerce*, account of the tribunals of, in France, iii. 359.
- Commissioners* (see *Reports*, *Commissions*), of Bankrupt, see *Bankruptcy Laws*; appointment of Common Law and Real Property Commissioners, ii. 31.
- Commissions*, to inquire into the administration of justice in the West Indies, i. 422; report of Chancery Commissioners, 449; iii. 56; Common Law and Real Property, ii. 31; iii. 57; Mr. Humphreys's observations on real property commission, ii. 129; results of the Chancery commission, 137; to inquire into duties, &c. of officers of justice in

Scotland, 269; proceedings of the Chancery Commissioners, iii. 56, 59; of the Common Law Commissioners, 63, 69, 293; of the Real Property Commissioners, 65, 77; of bankruptcy in London, 173; of country commissions, 185; fourth report of the Common Law Commissioners, 368.

Commitments, returns of, for contempt of court, i. 158; report on, 487.

Common Law, state of, in the United States, i. 31, 436; proceedings of the Common Law Commissioners, iii. 59, 63, 293, 368. See *Commission*.

Common Pleas (see *Courts*), proposed alterations in the Court of, i. 99; Mr. Brougham's observations on the Court of, ii. 11.

Consolidation (see *Codification*), of the bankrupt laws, i. 51 (see *Bankruptcy*); of the laws against coining, iii. 306.

Constitution, review of Mr. J. J. Park's *Dogmas of the Constitution*, iii. 267.

Cooper, C. P., his Account of the Court of Chancery, reviewed, ii. 81; letter from Mr. Humphreys in reply to, ii. 125; his Letters on the Court of Chancery, reviewed, 242.

Coote, Mr., his pamphlet on registration noticed, iii. 321.

Copyholds, bill to amend law relating to devises of, i. 144.

Copyright, see *Literary Property*.

Coroners, laws affecting the office of, in want of revision, i. 42; fees of, 42, 43; history of the office, 44; qualifications of, 45; checks upon, necessary, ib.; abuses by, 47; exclusion of the public from the court of, 48; medical knowledge necessary to, 49; importance of medical witnesses, 404.

Corporation, observations on the corporation and test acts, i. 237; origin of, 238; remarks on the state of corporation law, iii. 447.

Corruption, of the judges, iii. 29.

County Courts, see *Local Courts*.

Cours d'Assise, account of, iii. 209.

Cours Royales, account of, iii. 347.

Courts, various jurisdictions of the superior courts, i. 99; relative amount of business of, 103; courts martial, observations on, 174; of the West India colonies, constitution of, 425; Mr. Brougham's observations on the superior courts, ii. 11; necessity of local courts, 94 (see *Local Courts*); number of courts of requests, 95; fees in courts of justice in Scotland, 268; account of the courts in India, iii. 161; observations on the Court of Bankruptcy, 171;

account of the French courts, 198; want of municipal officers to act in connexion with, 228; report on the ecclesiastical courts reviewed, 593; review of proceedings at, 442.

Cousin, F., his theory of punishments reviewed, i. 354.

Crow, Sir R., character of, iii. 384.

Criminal Law (see *Punishment, Prison Discipline, &c.*), article on the revision of, i. 1; Mr. Peel's labours, 2; propriety of a committee to examine, 3; Mr. Hammond's writings, 6; report of committee in 1824, 7; object of punishment, 354; importance of medical witnesses, 404; state of crime in England and France, 456; tables respecting the state of crime in England, 478; in France, 473; and in Spain, 486; state of crime in the metropolis, ii. 280; abstract of the act relating to offences against the person, 327; of the act against night poaching, 337; history of the criminal code of France, 362; review of Wakefield on the Punishment of Death, iii. 122; returns of persons committed, convicted, &c., 130; on the reformation of criminals, 188; early criminal procedure, 252; review of Whately on Secondary Punishments, 428.

Criminal Trials, review of, iii. 252.

Croke, Sir George, his honesty, iii. 386.

Cromwell, Oliver, his conduct towards the judges, iii. 388.

Death (see *Forgery*), registration of deaths in France, ii. 40; in England, 46; iii. 225; review of Wakefield on the Punishment of Death, iii. 122; debate on Mr. Ewart's bill for abolishing the punishment of death in certain cases, 301, 439; Mr. Hughes's sentence of death bill, 307; Society for the Abolition of Capital Punishments, 316; Dr. Whately's observations on capital punishments, 433.

De Bath, Sir H., his corruption as a judge, iii. 30.

Debtors (see *Arrest*), return of number of, committed to King's Bench, &c., i. 321.

Delegates, Court of, abolition of, recommended, iii. 393.

Diocesan Courts, abolition of, recommended, iii. 400.

Disenters, history of the restrictive laws affecting them, i. 237; registers of, ii. 42; act for repeal of the corporation and test acts, 322.

Divorces, American law relating to, i. 440.

Drama, observations on the censorship of, i. 272; Sir Robert Walpole's act, 275;

- dramatic copyright, 298; laws relating to theatres, in France, iii. 53.
- Dupin*, *Lettres sur la Profession d'Avocat*, ii. 223.
- Duval*, *Mr.*, his services in the registration question, iii. 341, 342.
- Dwarrie*, his report on the administration of justice in the West Indies, i. 422.
- East Indies*, see *India*.
- Ecclesiastical Courts*, number of, ii. 100; iii. 399; report of the Ecclesiastical Commissioners upon, reviewed, iii. 393; remarks on the projected reforms in, 436.
- Education*, legal education in England imperfect, i. 33; state of legal education in the United States, 36, 435; of persons to fill judicial stations in India, ii. 228; Professor Austin's observations on the education of the lower classes, iii. 116.
- Eldon*, *Lord*, sketch of character of, i. 455; his opinions on criminal law, 459; cited, ii. 113.
- Elections*, abstract of act to amend laws relating to trial of controverted elections, ii. 322; of act to regulate the mode of taking the poll, 335; changes in the French law of elections, iii. 39.
- Embezzlement*, by persons in public offices, act against, iii. 440.
- English Law*, remarks on certainty of, i. 405; historical illustrations of, iii. 29, 381; how far prevalent in India, iii. 158.
- Equity*, see *Chancery*. Equity courts of the United States, i. 32, 445; equity jurisdiction of the Exchequer, 104; Vice-Chancellor of the Exchequer suggested, 105; Parkes on the reform of courts of, 446.
- Erskine*, *Lord*, cited, iii. 96.
- Evidence*, rejection of evidence on account of religious belief, i. 91; cases of Richard Carlile, *ib.*; rejection *propter delictum*, 96; admission of slave evidence, 427, 442; Mr. Brougham's observations on defects in system of, ii. 25; Lord Tenterden's variance act, 321; act for amending the law of, 330; on the exclusion of, iii. 1; exclusion on the ground of interest, 6; exclusion on the ground of infamy, 10; exclusion on the ground of religion, 13; exclusion on the ground of being parties, 17; exclusion on the ground of professional employment 21; exclusion on the ground of relation of husband and wife, 22; on the conclusiveness of evidence, 24; desirableness of reform in the law of, 27; suggestions as to proof of public documents, 70; evidence on early criminal trials, 255; introduction of *visu vocis* evidence into ecclesiastical courts recommended, 401.
- Eschequer* (see *Courts*), proposed alterations in the Court of, i. 99; necessity of opening it, 102; Mr. Brougham's observations on the Court of, ii. 12; observations on practice of equity side of, 161; opening of the Court of, iii. 88; bill for the abolition of the Court of, in Scotland, 299.
- Exclusion* (see *Evidence*), of evidence, observations on, iii. 1.
- Execution* (see *Arrest*), Mr. Brougham's observations on defects of law of, ii. 28.
- Fees* of coroners, i. 42; in bankruptcy, 69; of officers of justice in America, 444; in courts of inferior jurisdiction in Scotland, ii. 268.
- Fines*, abstract of the bill for the abolition of fines and recoveries, iii. 284.
- Flogging*, observations on the practice of, i. 177 (note).
- Foreign Law* (see *France*, *United States*, *India*, &c.), how recognised in America, i. 434; study of in America, 435; effect of foreign judgments in America, 436; Mr. Humphreys's acquaintance with, ii. 132; changes in French law, iii. 37.
- Forgery*, Mr. Hammond's Law of Forgery, i. 6; punishment of, in America, 445; remarks on bill for abolishing punishment of death in certain cases of, iii. 438; debate on that bill, 458.
- Fortescue*, his character of the judges, iii. 35.
- France*, law of literary property there, i. 113; laws relating to the drama in, 298; state of crime in, 458; operation of juries in, 467; tables respecting the state of crime in, 473; system of parochial registration in, ii. 38; translations of the French code in America, 65; history of the codes, 341; law relative to prescription in, 380; changes in French law since the revolution of July, iii. 37; statements made by the Minister of Justice, 154; account of the judicial establishments of, 198, 347; value of manuscript law cases in, 247; new legal publications in, 471.
- Friendly Societies*, abstract of act relating to, ii. 563.
- Game Laws*, property in game, i. 253; qualification to kill game, 255; question of property being in the king, 256;

- right of pursuing game over another's land, 259; remedies for killing game, 260; laws against poaching, 262; propriety of altering the law of qualification, 265; sale of game, 269; improper tribunal for administration of, ii. 16; on the title "propter privilegium" to game, iii. 403.
- Gazette*, fees for advertisements in, i. 302.
- Gentili, Aubrey*, memoir of, iii. 100.
- Germany*, common law of, ii. 187, 196.
- Gibbeting*, remarks on, iii. 451.
- Godwin, W.*, his account of the judges during the Protectorate, iii. 389.
- Grand Juries*, observations on, i. 190; their duties, 191; want of knowledge of law of, 192; sinister interests of, 195; protection afforded by, to magistrates, 197; arguments in favour of, 198; origin of, 200; duties of, might be entrusted to public prosecutor, 201; review of Laurie's Inquiry into the Use and Abuse of, iii. 278.
- Greffiers*, in the French courts, account of, iii. 367.
- Grotius*, his opinions on the object of punishment, i. 365.
- Habeas Corpus*, law of, in the United States, i. 34.
- Hall, Sir M.*, cited, i. 4; iii. 68, 90, 217, 231, 263.
- Hammond, Anthony*, his writings on consolidation, i. 6; his law of forgery, 7; his consolidated criminal code, 8, 11.
- Hardwicke, Lord*, his doctrine as to jurisdiction of equity over infants, i. 73, 77, 78; cited, ii. 472.
- Hargrave, Francis*, cited, ii. 69; iii. 238.
- Harvey, Mr.*, his motion for inquiry into proceedings of the inns of court, iii. 462; remarks on, 441.
- Heber, Bishop*, cited, ii. 234.
- Hindoo Law*, account of, ii. 236; law of prescription in, 374; law of evidence, iii. 4.
- Hobbes*, his definition of punishment, i. 366.
- Hodgkin, Mr.*, his pamphlet on registration notice, iii. 326.
- Holland, Mr. Humphreys's* observations on the laws of, ii. 132, 313.
- Holland, Lord*, his speech on capital punishments, iii. 439.
- Huissiers*, in the French courts, account of, iii. 367.
- Humphreys, Mr.*, letter from, in reply to Dr. Reddie and Mr. Cooper, ii. 125; Mr. Park's observations on, 217; Dr. Reddie's reply to, 307; his lecture on the law of real property, 469.
- Humphry, Mr.*, his pamphlet on registration noticed, iii. 328.
- Husband and Wife*, observations on the evidence of, iii. 22.
- India*, account of the legislative measures for restraining the freedom of the press in, i. 74; regulations respecting, declared by Sir F. Macnaghten not to be repugnant to law, 79; contrary opinion of court at Bombay, 82; on the administration of justice in, ii. 225; iii. 157; value and want of law reports in, 249; review of Rammohun Roy's Exposition of the Judicial and Revenue System of, 280; India jury bill, 460.
- Infamy*, observations on the exclusion of witnesses on ground of, iii. 10.
- Infants*, jurisdiction of Chancellor in case of, ii. 66; evidence of, iii. 15.
- Informers*, observations on the admission of evidence of, iii. 9.
- Inheritance*, abstract of the bill for the amendment of the law of, iii. 292.
- Insolvent Law*, returns of insolvent debtors, i. 157; ii. 484; fees for discharge of debtors, 300; expences of commissioners, i. 303; Mr. Brougham's observations on, ii. 30; necessity of change in, iii. 71; propriety of uniting the jurisdiction in bankruptcy and insolvency, 174.
- Interest*, observations on the exclusion of evidence on the ground of, iii. 6.
- of money, ought to be recoverable in all cases of money detained, 450.
- Ireland*, system of assistant barristers commended, ii. 423.
- Italy*, jurisprudence of the cities of, in the middle ages, i. 215.
- Johnston, Sir A.*, his account of the introduction of trial by jury at Ceylon, i. 123; his merits, ii. 235.
- Jones, Sir Thomas*, noticed, iii. 392.
- Judge Advocate*, observations on his office, i. 173.
- Judges*, appointments of, in the Exchequer, i. 100; number of, in England, ii. 95; plurality of, undearable, 10; historical account of, iii. 29, 381; their rules for uniformity of practice, iii. 86; salaries of Indian judges, 162, 169; question of single judges considered, 176; character of judges of Court of Review, 179; salaries of judges in France, 200; ought to give the reasons for their judgments, 235; sensible of the necessity of legal reform, 443, 444.

- Judicial Establishments*, observations on, in Mr. Brougham's speech, ii. 8; necessity for reform of, in England, 96; of India, 229; iii. 161; of France, 198, 347; reforms in (in 1832), 436.
- Jurisprudence* (see *Codification, &c.*), state of, in the United States, i. 22; written and unwritten law, ii. 181; of Louisiana, 434; relation between jurisprudence and history, iii. 29; Austin's Lectures on, reviewed, 105; distinction between jurisprudence and legislation, 107; of India, iii. 158.
- Jury*, introduction of trial by, at Ceylon, i. 121; Sir A. Johnston's letter on, 123; operations of juries in France, 467; introduction of trial by, at Madras, ii. 236; changes with regard to, in France, iii. 52; persons qualified to serve on juries in France, 210; introduction of, into New South Wales, 460; Indian jury bill, ib.
- Justice de Paix*, in France, account of, iii. 361.
- Justices of the Peace*, proceedings before, i. 159, 322; Mr. Brougham's observations on the administration of law by, ii. 15; observations on the licensing system, 16; on the general jurisdiction of, 400; history of, 403; qualification of, 416; quarter sessions, 419; Mr. Peel's bill to provide for the better execution of their office, 429; conduct of, iii. 314; a bone-breaking magistrate, 315; conduct of Irish magistrates, 316; remarks on the magistrate cases in K. B., 448.
- Juvenile Offenders*, necessity of an institution for, iii. 128; eighth report of the Prison Discipline Society noticed, 277; seventh annual report of the New York Society for the Reformation of, 462.
- Kent*, ex-Chancellor of New York, his opinion on abolishing courts of equity, i. 32.
- Ker, Mr. Bellenden*, his pamphlet on registration noticed, iii. 328.
- King's Bench* (see *Courts*), relative amount of business of, i. 103; Mr. Brougham's observations on the Court of, ii. 11.
- Lansdowne, Lord*, his speech in favour of capital punishment, iii. 439.
- Landrecht of Prussia*, ii. 207, 208; law of prescription in, 382, 387, 393, 397.
- Lawd, Archbishop*, his conduct towards the judges, iii. 385.
- Laurie, Mr.*, review of his Inquiry into the Use and Abuse of Grand Juries, iii. 278.
- Lawyers*, unfitness of, to be reformers of the law, i. 5; iii. 215.
- Legislation*, British, defects in the system of, iii. 67; Sir M. Hale's plan of law making, 68; Bentham's works on, 105; distinction between legislation and jurisprudence, 107.
- Legitimacy*, question of, in medical jurisprudence, i. 399.
- Licensing System*, Mr. Brougham's observations on, ii. 16; an act to regulate the granting of licences, 335.
- Limitation* (see *Prescription*), history of the law of, ii. 374; observations on, 378; abstract of the bill for the limitation of suits relating to real property, ii. 282.
- Literary Property*, sketch of English law of, i. 114; state of, in France, ib.; report of commission to inquire into state of, 117; draft of law of, 119.
- Litigation*, observations on, ii. 264.
- Local Courts*, necessity of, ii. 94; suggestions for establishment of, 97; proposed situation of, 114; observations on Mr. Brougham's plan of, iii. 72.
- Locod, M.*, his *Legislation de France*, ii. 341.
- Lords*, appellate jurisdiction, Mr. Cooper's observations on, ii. 102, 260; character of, as a court of appeal, iii. 179.
- Louisiana*, jurisprudence of, ii. 434.
- Lunatics*, Chancellor's jurisdiction over, i. 396; abstract of an act to amend the laws for the erection of lunatic asylums, ii. 331; bill to lessen the expences of writs de lunatico inquirendo, iii. 299.
- Lyndhurst, Lord*, his attempts at reforms in Chancery, iii. 60.
- Mackintosh, Sir J.*, error of, in system of law reform, ii. 4; his opinion of Aubrey Gentili, iii. 102.
- Macnaghten, Sir F.*, his opinion on the legality of the regulations respecting the liberty of the press in India, i. 79.
- Magistrates*, see *Justice of the Peace*.
- Mansfield, Lord*, his remarks on the law of libel, i. 416; cited, 373; ii. 29, 219; iii. 414, 417.
- Marriage*, American law relating to foreign marriages, i. 441; registration of, in France, ii. 39; in England, 43; iii. 226; law of, in Louisiana, ii. 439; whether the ecclesiastical courts should have jurisdiction over, iii. 396.
- Masters in Chancery*, new rules relating to, ii. 168.
- Medical Jurisprudence*, medical assessors to coroners recommended, i. 50; ob-

- servations on, 378; importance of the study, 380; history of, 381; English writers on, 384; Dr. Gordon Smith's principles of, 385; remarks on College of Physicians, 386; on College of Surgeons, 387; on Company of Apothecaries, 388; on medical schools, 390; on preservation of public health, 391; on insanity, 395; jurisdiction of the Chancellor in lunacy, 396; questions of legitimacy, 399; feigned diseases, 403; criminal trials, *ib.*; Aubrey Gentili's works on, *iii.* 102.
- Mewburn, Mr.*, his pamphlet on registration noticed, *iii.* 336.
- Milbank Penitentiary*, expence of, *iii.* 194; success of, 276.
- Military Law*, observations on the present state of, *i.* 169.
- Miller*, on the administration of justice in the East Indies, noticed, *ii.* 225.
- Minors*, American law relating to, *i.* 441.
- Montesquieu*, cited, *iii.* 110.
- More, Sir T.*, accused of bribery, *iii.* 35.
- Municipal Institutions*, law of municipal elections in France, *iii.* 42; want of a new system of municipal officers, 223; in connexion with police, 225; in matters relating to property, 227; in connexion with courts of law, 228.
- Napoleon* (see *Code Napoleon*), the part taken by him in the construction of the Code, *ii.* 341.
- National Guard of France*, laws affecting it, *iii.* 46.
- New York*, consolidation of the laws in the state of, *i.* 437; report of the revisers of the laws of, *ii.* 59; penitentiary system at, *iii.* 195.
- Occupancy*, remarks on the title by, *iii.* 409.
- Orders*, observations on the new Chancery orders (1828), *ii.* 137.
- Park, Mr. J. J.*, his contre-projet to the Humphreysian Code noticed, *ii.* 217; his definition of the common law, 218; review of his Dogmas of the Constitution, *iii.* 267.
- Parkes, Joseph*, his History of the Court of Chancery reviewed, *i.* 446; cited, *ii.* 72.
- Parliament* (see *Reform*), debate on Mr. Baring's bill relative to privilege of parliament in matters of arrest, *iii.* 307; abandonment of that bill, 442.
- Parliamentary Papers, &c.*
March, 1827—Expired and expiring acts, *i.* 154; returns of debtors and insolvent debtors, 156; of commitments for contempt of court, 158.
July, 1827—Returns of sums received by Lord Thurlow as patentee, &c. 320; of the profits of the Chancellor, 321; of the number of debtors committed to the King's Bench, &c. *ib.*
Jan. 1828—Returns respecting criminals, 473; report on criminal commitments, 487.
April, 1829—Expired laws, *ii.* 481; expiring laws, 482; statutes passed in last session, 484; returns relating to insolvent debtors, *ib.*
April, 1832—Returns of persons committed, convicted, &c. *iii.* 130; extracts from the Report of the Keeper of the State Prison at Auburn, U. S. 145.
July, 1832—Returns relating to the Court of Bankruptcy, *iii.* 309; of the duties performed by the Secretaries of Bankrupts, 312; Lord Brougham's speech on taking leave of the bar, 313.
- Parliamentary Proceedings.*
March, 1827, i. 131; Mr. Peel's bills, 133; Chancery bill, 139; writ of right bill, 142; copyhold devise bill, 144; bills of exchange bill, 146; spring gun bill, 147; miscellaneous bills, 148.
July, 1827—Prospects of law reform, *i.* 305; Chancery reform, 307; heads of statutes passed, 308; abstract of Mr. Peel's criminal acts, 311—314.
Jan. 1829—Statutes passed in the last session, *ii.* 320.
April, 1829, ii. 479.
Nov. 1832, iii. 452.
 Review of parliamentary proceedings, 1832, *iii.* 434.
- Parochial Registration*, system of, in France, *ii.* 38; in England, 41; as to births, *ib.*; as to marriages, 43; as to deaths, 46; Lord Nugent's bill for registration of births, *iii.* 220; necessity for a new system of municipal officers, 223.
- Paupers*, see *Poor Law*. Observations on suing in *forma pauperis*, *ii.* 266.
- Peel, Mr.*, his speech on the larceny bill, *i.* 2; analysis of his 'larceny and malicious injuries' bills, 133; letter to, by Swinburne, on law of inheritance, *ii.* 117; his bill to provide for the better execution of the office of justice of the peace, 429; remarks on his new

- police bill, 400; his bill respecting fees of officers of the courts, iii. 63.
- Pemberton, Chief Justice*, noticed, iii. 390.
- Penal Jurisprudence*, see *Criminal Law*.
- Prison Discipline*. Objects of punishments, i. 356; state of, in America, 445; evidence before committee on increase of commitments, 489; ii. 280; review of Wakefield on the Punishment of Death, iii. 122; on the Reformation of Criminals, 188; eighth report of Prison Discipline Society noticed, 276; review of Whately on Secondary Punishments, 428.
- Penitentiary System* (see *Juvenile Delinquents*) in America, i. 444; remarks on the effects of, iii. 188; at Milbank, expense of, 194; eighth report of the Prison Discipline Society noticed, 276; Dr. Whately's observations on, 432.
- Physicians*, remarks on College of, i. 386.
- Plato*, his opinions on punishment, i. 354.
- Pleading*, Mr. Brougham's observations on, ii. 22.
- Police of the Metropolis*, observations on, ii. 280; remarks on the new police bill, 460; abstract of the bill, 499; account of the *Tribunaux de simple Police* in France, iii. 361.
- Poor Laws*, remarks on the poor law cases in King's Bench, iii. 449; proceedings of the Poor Law Commissioners, 461.
- Portalis, M.*, his *Discours Préliminaires*, ii. 343.
- Powers*, American law relating to, i. 440.
- Practice* of the courts of common law, improvements in, iii. 445.
- Precedents*, force of, i. 415.
- Première instance*, account of the courts of, iii. 354.
- Prerogatives*, observations on the prerogative title to game, iii. 413.
- Prescription*, history of law of, relative to land, ii. 374; observations on, 378; law of, in Louisiana, 453; bill for shortening the time of, iii. 461.
- Press*, freedom of, restrictions upon in India, i. 74; changes in the law relating to, in France, iii. 52.
- Preston, Mr.*, amount of his *opinion-trade*, ii. 221.
- Prison Discipline*, see *Penal Jurisprudence*. Evidence before committee on increase of commitments, i. 489; review of Wakefield on the Punishment of Death, &c. iii. 122; extracts from the Report of the Keeper of the State Prison at Auburn, 145; state of, in America, 156; on the reformation of criminals, 188; review of Whately on Secondary Punishments, 428; seventh report of the New York Society for the Reformation of Juvenile Offenders, 462.
- Privy Council*, account of the Privy Council papers, iii. 230; observations on the transfer of the jurisdiction of the Court of Delegates to, 395; projected reforms in, 460.
- Procedure*, Mr. Brougham's observations on English procedure, ii. 19.
- Prosecutor, Public*, policy of, i. 21.
- Prud'hommes, Conseils de*, account of, iii. 363.
- Prussia*, substitution of the law of, for the Code Napoleon in the Rhenish provinces, i. 246; Savigny's opinion on the *Landrecht*, ii. 201; account of the *Landrecht*, 207, 208; law relative to prescription in, 381, 397.
- Public Opinion*, effect of, on law reform, ii. 34; iii. 443.
- Punishment* (see *Criminal Law*), the object of, i. 354; review of Wakefield on the Punishment of Death, iii. 122; on the Reformation of Criminals, 188; objection that a penitentiary is no punishment, 192; debate on Mr. Ewart's bill for abolishing capital punishment in case of horse stealing, &c. 301, 439; Society for the Abolition of Capital Punishments, 316; Dr. Whately's theory of, 428; abolition of capital punishments for coining, 438; abolition of certain capital punishments for forgery, 438.
- Rammohun Roy*, his work on the judicial system of India cited, iii. 160; review of that work, 280.
- Real Property*, state of real property law in the United States, i. 34; Mr. Humphreys's letter to Mr. Cooper on, ii. 125; history of the laws of prescription and limitation relative to, 374; Mr. Humphreys's lecture on the law of, 409; Real Property Commission noticed, iii. 58, 77; suggestions for improvements in the law of, 78; abstract of the bills introduced by the Real Property Commissioners, 382; their questions on registration, 320; bill for shortening the time of prescription, 461.
- Reddie, Mr.*, letter in reply to, by Mr. Humphreys, ii. 125; his letter to the Lord Chancellor reviewed, 182; his reply to Mr. Humphreys, 307.
- Reform of the Law*, commenced, i. 448; Mr. Brougham's speech on, ii. 1; modes of conducting legal reform, 4; legal reform in the United States, 64; suggestions for reform of Court of Chancery by Mr. Cooper, 90; of In-

- dian law, proposed by Mr. Miller, 239; history of law reform, iii. 55; Mr. J. J. Park's opinions on parliamentary reform, 267; prospects of law reform in 1832, 434; remarks on the Reform Act, 435; progress of law reform, 443; Lord Brougham's speech on (1832), 452.
- Reformation* (see *Prison Discipline*) of criminals, observations on, iii. 188.
- Reformer*, legal, character of, ii. 32.
- Registrars of Court of Review*, remarks on, iii. 181.
- Registration, Parochial* (see *Parochial Registration*), Mr. Park an enemy to, ii. 222; history of the question of, iii. 317; answers to various objections to, 332; notices of writers against, 336; report of the select committee on, 343; authorities for and against it, 346; general registry of wills recommended by the Ecclesiastical Commissioners, 401.
- Religion*, observations on the exclusion of witnesses on the ground of, iii. 13.
- Reports, American*, i. 38, 435; on administration of justice in the West Indies, i. 422; of Chancery Commissioners, iii. 56, 449; of select committee on increase of commitments and convictions, i. 458; of the state of crime in France, 461; on criminal commitments and convictions, 487; ii. 280; of the revisers of the laws of the state of New York, ii. 59; account of law manuscript reports, iii. 230; of the select committee on registration, 343; fourth report of the Common Law Commissioners, 368; of the Ecclesiastical Commissioners, 393.
- Requests, Courts of*, number of, in England, ii. 95.
- Review, Court of*, observations on, iii. 177, 437; Lord Brougham's remarks on, 456.
- Roman Catholics*, abstract of the bill for the relief of, ii. 485.
- Roman Law*, observations on the Roman law in the middle ages, i. 202; introduction of, into England, 203; indifference to study of, in England, 206; Mr. Spence's "Inquiry," 209; Savigny's history of, 212; jurisprudence of the various countries of Europe in the middle ages, 215—236; how it bears on the question of codification, ii. 194; time of prescription in, 383.
- Romilly, Sir S.*, his observations on law reform, iii. 217; proposes his law reforms as soon as made Solicitor-General, 218.
- Rules of Court*, lately made, iii. 445.
- Russia*, codification in, ii. 210.
- Sampson*, on codification in America, ii. 47; his correspondence with M. Dupin, 55.
- Saunders, Chief Justice*, noticed, iii. 389.
- Savigny*, his History of the Roman Law in the Middle Ages reviewed, i. 202; his Aptitude of our Times for Legislation, &c. reviewed, ii. 182.
- Scarlett, Sir J.*, his bill for the amendment of the law, iii. 63.
- Scotland*, fees in courts of inferior jurisdiction in, ii. 268.
- Scott, Sir Walter*, his Remarks on Certainty of English Law reviewed, i. 405.
- Scrogge, Chief Justice*, noticed, iii. 390.
- Secondary Punishments* (see *Prison Discipline*), review of Dr. Whately's Thoughts on, iii. 428.
- Seneca*, his opinions on punishments, i. 363.
- Serjeants*, system of appointing, i. 100.
- Slavery*, judicial state of slavery in West Indies, i. 426; laws relating to, in America, 441; laws against, in France, iii. 54.
- Spain*, law of prescription in, ii. 391.
- Spring-guns*, bill to prevent the setting of, i. 147.
- Story, Judge*, his law of bailments noticed, iii. 447.
- Sugden, Sir E.*, his opinion on registration, iii. 318.
- Swanston, Mr.*, his reports noticed, iii. 236.
- Swinburne, T.*, letter of, to Mr. Peel, on law of inheritance, ii. 117.
- Temple, Sir W.*, cited, ii. 107.
- Tenterden, Lord*, his bills for the improvement of the law, iii. 85; his opinion of lawyers as law reformers, 215; his speech on the uniformity of process bill, 296.
- Test Acts*, observations on the corporation and test acts, i. 237.
- Theatre* (see *Drama*), laws relating to, in France, iii. 53.
- Themis*, quoted by Mr. J. J. Park, ii. 223; discontinuance of, iii. 156; cited, ii. 133, 313; iii. 247.
- Thorpe, Chief Justice*, judgment against, for corruption, iii. 31.
- Thurlow, Lord*, his doctrine as to jurisdiction of equity over infants, ii. 74.
- Tithes*, whether they ought to be under spiritual cognizance, iii. 397.
- Torture*, on the use of, in England, iii. 253.

- Tribunals* (see *France*) *de simple Police*, iii. 362.
- Trusts*, Mr. Humphreys's observations on, ii. 474.
- Tyrell, Mr.*, his suggestions on registration, iii. 318.
- Unlace, Mr.*, his letter to the Chancellor on a code of law noticed, i. 19; his letter to Horace Twiss, 20.
- United States*, progress of jurisprudence in, i. 22; history of the colonisation of the various states, 23—29; constitution of the courts of law, 31; improvements in criminal law, 34; in civil jurisprudence, ib.; law schools, 36, 435; law books, 37; state of literature in, 49; various points relating to, 430; law reports, 435; constitutional law, 436; projects of codification, 437; ii. 47 (see *Codification*); attachment for debt in, 120; jurisprudence of Louisiana, 434; extracts from the report of the Keeper of the State Prison at Auburn, iii. 145; state of crime in, 156; success of the penitentiary system in, 193; system of law reporting in, 250.
- Utility*, Professor Austin's explanation of the theory of, iii. 117.
- Vazin*, his work on punishments noticed, i. 364, 368.
- Wager of Law*, historical account of, i. 107; late instance of, iii. 4.
- Wakefield, E. G.*, review of his work on the Punishment of Death, iii. 122; cited, 191.
- Wales, Mr. Brougham's* observations on the Welsh judicature, ii. 13.
- Walters, Mr.*, his pamphlet on registration noticed, iii. 322.
- Watson*, his answers touching the law of America, i. 430.
- Wellesley*, observations on the Wellesley case, ii. 66.
- West, Sir E.*, his opinion respecting the legality of the regulation as to liberty of the press in India, i. 82; death of, ii. 239; address on, 240.
- West Indies*, civil and criminal justice in, i. 421.
- Whately, Dr.*, review of his *Thoughts on Secondary Punishments*, iii. 428.
- Wills*, law as to probate of, in America, i. 439; jurisdiction over, iii. 395.
- Wood, Mr. W.*, his pamphlet on registration noticed, iii. 327.
- Writ of Right*, bill for limitation of, i. 142.

Stanford Law Library



3 6105 063 068 279

